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London Printed
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FIVE CASES OF Conſcience:

Occaſionally Determined BY

A late Learned Prelate.

said to be Bp Sanderson of Lincoln

HEB. xi. 4.

He being Dead, yet ſpeaketh.

LONDON:

Printed by *E. Cotes* for *Henry Brome* in *Little Britain*, 1667.

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A LETTER from a Friend concerning the enſuing Caſes.

SIR,

HAving peruſed the Papers you ſent me, I can ſafely vouch them for genuine, and not in the leaſt Spurious, by that reſemblance they wear of their Reverend Author; and therefore you need not fear to bring them to the Publique teſt, and let them look the Sun in the face.

'Tis true, their firſt Commiſſion was but ſhort, and long ſince expired, they being deſigned only to viſit, and reſpectively ſatisfie ſome private Friends; yet I cannot ſee what injury you will offer to his ſacred aſhes, if, by renewing that, you ſend them on a little farther Embaſſie for the common good.

Indeed the leaſt remains of ſo matchleſs a Champion, ſo invincible an Advocate in foro Theologico, *like the filings and fragments of Gold, ought not to be loſt; and pity the world was not worthy many more of his learned Labours.*

But—Præſtat de Carthagine tacere quàm pauca dicere; *far be it from me to pinion the wings of his fame, with any rude Letters of Commendation; or, by way of precarious Pedantry, to court any man into a belief of his worth, ſince that were to attempt* Iliads *after* Homer, *and ſpoil a piece done already to the life by his own Pencil, the works whereof do ſufficiently* praiſe him in the gates.

All I aim at is, to commend and promote your pious intention, to give the World ſecurity, by making theſe Papers publique, that they ſhall never hereafter ſtand in need of any other hand to ſnatch them out of the fire, a doom (you ſay) once written upon them.

Nor do I leſs approve your ingenuous prudence in determining to prefix no Name, it being as laudable not to ſpeak all the Truth ſometimes, as to forbear telling a Lie for advantage.

'Tis (I confeſs) the mode of late to hang Jewels of Gold *in a* Swines ſnout; *I mean to ſtamp every impertinent Pamphlet with ſome great Name, or voluminous Title to make it vend the better* (Laudat venales qui vult extrudere merces) *at which the gul'd Reader repenting his prodigality of time and patience, is forced to cry out all along,* Beaucoup de bruit, peu de fruit, *and in the end ſums up its juſt character in a few words,* Nil niſi magni nominis umbra.

But yours is the only method to deal with wiſe and rational men, who are not ſo eaſily taken with Chaff, (the multitude or greatneſs of words and names) as with the true weight and worth of things.

Yet let me tell you, that whoever is not a meer

ſtranger

ſtranger to your learned Authors former Tractates, muſt needs ſpell his name in every page of this, without any other Monitor.

I have no farther trouble to give you, unleſs I ſhould beſpeak your vigilance over the Preſs, which by her dayly teeming and expertneſs, or (at leaſt) negligence of the Midwife, is wont of late to ſpoil good births with monſtrous deformities, and unpardonable Errata; *ſo you will avoid a double guilt contracted by ſome without fear or wit, of abuſing your critical Reader on the one hand, and your moſt judiciouſly exact Writer on the other; and (if that may contribute any thing more) very much gratifie the moſt unworthy of his Admirers, and*

Your Friends, *&c.*

The Five Caſes Determined.

1. *Of Marrying with a Recuſant.*
2. *Of Unlawful Love.*
3. *Of a Military Life.*
4. *Of Scandal.*
5. *Of a Bond taken in the Kings Name.*

Imprimatur,

John Hall, R. P. D. Epiſc.
Lond. à Sac. Domeſt.

May 30. 1665.

The

The Case of *Marrying with a Recuſant.*

SIR,

YOurs of *July* the 2d. I Yeſterday *July* the 6th. received. In Anſwer to the Contents whereof (deſiring that my Services may withal be moſt humbly preſented to my very much Honored Lord) I return you what my preſent thoughts are concerning the particulars therein propoſed. Firſt, For Marrying a Daughter to a profeſſed *Papiſt* (conſidered in *Theſi*, and as to the point of Lawfulneſs only) I am ſo far from thinking the thing in it ſelf to be ſimply, and *toto genere*, unlawful; that I dare not condemn the Marriage of a *Chriſtian* with a *Pagan* (much leſs with any other *Chriſtian*, of how different Perſwaſion ſoever) as ſimply evil and unlawful, inaſmuch as there be Cauſes imaginable, wherein it may ſeem not only Lawful, but Expedient alſo, and (as the exi-

exigence of Circumstances may be supposed) little less than necessary so to Intermarry. But since things lawful in the General, and in *Thesi*, may become (by reason of their inexpediency) unlawful *pro hic & nunc*, and *in Hypothesi* to particular persons; and that the expediency or inexpediency of any action to be done, is to be measured by the Worthiness of the end, the conjuncture of present Circumstances, and the probability of good or evil consequents and effects, prudentially laid together, and weighed one against another; I conceive it altogether unsafe for a Conscientious Person (especially in a business of so great concernment, as the Marrying of a Child) to proceed upon the General Lawfulness of the thing, without due consideration of Circumstances, and other requisites for the warranting of particular Actions. Now as for the marriage of a Daughter with one of so different Perswasion (in point of Religion) as, that they cannot joyn together in the same way of Gods Worship, which is the case of a Protestant and a Papist, it is very rare to finde such a concurrence of Circumstances, as that a Man can thence be clearly satisfied in his Judgement (without

out juſt cauſe of doubting the contrary) that it can be expedient to conclude upon ſuch a Marriage; and how dangerous a thing it is to do any thing with a *doubting Conſcience*, we may *learn* from *Rom.* 14. 13. For the *evil conſequents* probably to enſue upon ſuch Marriages, are ſo many and great, that the conveniences which men may promiſe to themſelves from the ſame (if they ſhould anſwer expectation, as ſeldom they do to the full) laid in an equal ballance thereagainſt, would not turn the ſcale; and in one reſpect the danger is greater to marry with a Papiſt, than with one of a worſe Religion; for that the main Principle of his Religion, (as a *Papiſt*) is more deſtructive of the comfort of a Conjugal Society, than are the Principles of moſt Heretiques; yea than thoſe of *Pagans*, or *Atheiſts*; for holding that there is no Salvability but in the Church; and that none is in the Church, but ſuch as acknowledge Subjection to the See of *Rome*; it is not poſſible, but that the Husband muſt needs conclude his Wife to be in the *ſtate of Damnation*, ſo long as ſhe continueth *Proteſtant*: whence one of theſe two great inconveniences will unavoidably fol-

Let us therefore not judge one another any more, but judge this rather, that no man put a ſtumbling block or occaſion to fall in his brothers way.

follow; that either he will use all endeavours, engins, and artifices, to draw her to the Church of *Rome* (as indeed who can blame him to bring his Wife into a capacity of everlasting Salvation?) the restless importunity whereof (together with the ill advantages they of that party can make from the sad Confusions that are amongst us in these times) it will be very hard for one of the weaker sex perpetually to resist; or else in case she stand firm in her Religion against all Assaults and Attempts to the contrary, whatsoever he may be towards her in outward carriage, he cannot but in his inmost thoughts, pass judgment upon her, as an obstinate and desperate Heretique, and (so living and dying) an accursed and damned Creature. These are sad things both; and it is not conceiveable how a Woman so matched should live with any comfort, or ever hope to see a good day, wherein he shall not either be tempted from her Religion, or censured for it; what assurance can she have of his good affections towards her, who is bound not to permit any better opinion of her, than of a Reprobate and Cast-away? It is possible there may be so much

good

good nature in the Husband as to take off ſomewhat from that rigidneſs, which otherwiſe the Principles of his Religion would bind him to, or ſo much diſcretion, ſweetneſs, and obligingneſs in the Wives demeanor towards him, as to preſerve a good meaſure of Conjugal Affection between them, notwithſtanding their different perſwaſions: This I ſay, is poſſible; and where it happeneth ſo to be, it rendereth the condition of the Parties ſo much the leſs uncomfortable; and that is the utmoſt of the *happineſs*, that is to be hoped for from ſuch Marriages: and I think there cannot be produced many examples thereof; yet even there, there cannot be that cordial Affection, and fulneſs of Complacency (wherein yet the chiefeſt happineſs of Conjugal Society conſiſteth) that would be, if the ſame Parties (ſuppoſed to be of the ſame Qualifications otherwiſe) were alſo of the ſame Religion. I omit other *œconomical* differences, that may, and very frequently do (occaſionally) ariſe, betwixt Husband and VVife from this difference in Religion, as concerning the Entertainment of Friends, the choice of Servants, the education of Children (very con-

consiederable things all) besides sundry others perhaps of less moment; yet such as are apt to breed Discontents and Jealousies, and sometimes break out into great Distempers in the Family: Such Marriages therefore I should utterly dissuade; especially in the *Nobility*, *Gentry*, and *Commonalty*, where there is choice enough otherwise to be had of Persons of equal Degree, Estate, and Education of the same Religion to match withal: Kings and Princes for reasons of State, and because there is little choice of Persons of equal Dignity with themselves; are therefore oftentimes by a kinde of Necessity, put upon such Marriages; yet even there, where they are certainly the most excusable, it hath been observed, that such Marriages have proved for the most part unfortunate.

The other Particular proposed in your Letter, is concerning the *Marriage of a Daughter to one that Professeth the Protestant Religion, but having had Popish Parents, may be suspected (though he deny it) to be that way inclined.* The resolution whereof (as of most other *Cases*, and *Practical Questions*) will depend very much upon the consideration of *Circumstances*, where-

whereunto being altogether a stranger, I am less able to give Judgement in the Case with any certainty; only in order to the resolution of the question, these (to my understanding) seem to be the most proper and important Enquiries.

First, Whether the Parents of the young Person be living or no, one or both? if both be dead, the *Temptations* from them (which in such *Cases* are wont to prevail very much) are by their Death clearly *superseded*; and then the danger is by so much less: but if either be living, there can be little security of the Sons *continuance* in the *Protestants Belief*, (notwithstanding his present Profession thereof) when he shall be *assaulted* with the *whole Authority* of them, to whom he oweth *Reverence*.

Secondly, With what degree of *Confidence*, and with what kind of *asseverations* he *professeth* the *one*, and *denieth* the *other Religion*; for although they that out of *design* put on a counterfeit vizor, use all the art they can to *dissemble it*; yet very seldom can it be done so *cunningly*, *waringly*, and *constantly*, but that at some time or other, the *dissimulation* will unawares bewray it self to the *eye* of a *curious observer*.

Thirdly,

Thirdly, VVhat measure of understanding the young Person (who is you say of *great Abilities* for his Age) hath in the *Fundamental Articles* of the *Christian Religion*; those I mean, wherein the *English* and *Romish Churches* are at *agreement*, for in *those* the *substance* of *Christianity* consisteth; he that rightly understands those *Catholick Truths* taught in the *Catechisms* of both Churches, and concerning which all *Christendom* (in a manner) are at a *perfect accord*; and then will but suffer himself to consider, that the *Church* of *England* doth not *impose* upon the *judgments* and *consciences* of her *Members*, any thing to be *believed*, or *received*, as of *necessity* to *Salvation*, than what is *truly Catholick*, and by her Adversaries confessed so to be; and consequently, that the *difference* betwixt *her* and the *Romish Party*, is wholly about those *Additionals* or *Superstructures*, which they of the *Roman Faith* require to be *believed*, and *received* with like *necessity* as the *former*; but appear to us of this *Church respectively*, either *evidently false*, or of *doubtful truth*, or not of *absolute necessity* to be *believed*: I say, whosoever well considereth this, may rest *satisfied* in his *judgment*

ment and *conscience*, that the *Faith taught* and *professed* in the *Church* of *England*, is a *plain* and *safe way* to lead a *Christian Believer* to *Eternal Salvation*; if he withal lead his *life* and *conversation* answerable thereunto.

To the last particular in your Letter, all the return I have to make is no more, but an humble acknowledgement and sense of his *Lordships* noble favours towards me, in entertaining an opinion of me more suitable to his own goodness and ingenuity, than to my merit: I know not, nor desire to know of any occasions likely to draw me into those parts so distant from me (being grown into years, and infirmities, that render me very unfit for long Journies) unless the business of my *Sons Marriage*, which occasion'd my late Journey to *London*, require a second thither in *Michaelmas Term*. But I am so sensible both of the trouble and charge of such Journies (besides some inconveniences to my affairs at home, whilst I am long absent) that I will avoid it, unless there be no other remedy: I shall not *willingly decline* any employment (within my low and narrow sphere, both of outward condition and parts) wherein my *ser-*

vice may be any wayes *useful*, or but *acceptable*, to that *noble* and *excellent Person*: but truly Sir, I conceive there will be little need of my further *endeavours*, as to that particular expressed in yours, whether what I have written now give *satisfaction*, or *not*; there are *persons* nearer hand, whom I know to be *much fitter* for an *employment* of that *nature*, than *my self*, who have ever studied *Peace* more than *Controversies*; and namely, one at the next door to *Hatton House*, whose *sufficiency* and *readiness* in that kinde is well known to Mr. *Geoffery Palmer*: Sir, I wish you *happiness*, desire your *Prayers*, and rest,

July 7. 1656. *Your faithful and*

humble Servant.

The Case of
UNLAWFUL LOVE.

TWo Gentlemen who were very good Friends, and both of them Married, used to converse together familiarly; one of these took a special liking in the company and conversation of the others Wife, and she answerably in his; which afterwards proceeded to some degree of Love; which though ever restrained, and preserved without any violation of Chastity, grew yet in the end to this issue, that they mutually vowed either to other; that if happily either of them should at any time be freed from the Bond of Matrimony (either he by the death of his Wife, or she by the death of her Husband) that party so freed should continue afterwards unmarried, and stay for the other, till the other should be freed also, though it were during life: Now so it is, that this Gentlewomans Husband died, and her affections and resolution so altered, that gladly she would Marry, if she might be released of the

Engagement of that Vow; or perswaded of the unlawfulness or nullity thereof.

Concerning the present Case, as it is propounded, sundry Points are needful to be resolved, that so we give a right judgment *de præterito*, of what is already done for the time past, in respect of the Gentlewomans *former promise*, and sound direction also *de futuro*, which is further to be done for the time to come, in respect of her present distresses.

Point. I.

§. 1. First of all, It is considerable, whether the promise made by the Gentlewoman and her friend, were properly a Vow or no? so it is called in the proposal of the present *Case*, and that agreeable to the common use of speech with us here in *England*, who extend the word [*Vow*,] very far; neither shall I make scruple in the ensuing *Discourse*, sometimes to call it so; for *Loquendum ut Vulgus*. But to speak properly, a *Vow* is a word of a narrower extent than a *Promise*, every *Vow* being indeed a *Promise*, but not every *Promise* necessarily

ceſſarily a *Vow*; (a) *Promiſes* may be made *indifferently*, either to *God* or *Men*; but *Promiſes* made to *Men* are no *Vows*: wherefore it is uſually inſerted into the definition of a *Vow*, as a condition (b) *eſſentially requiſite* thereunto, that it be made unto *God* alone, inſomuch as to make a *Vow* to any Creature, is *interpretative* to exalt the Creature into the place of God, and ſo to make it an *Idol*, which is clear, not only from the (c) *expreſs precept* of *God*, and the *conſtant* (d) *examples* of *godly men*, and the *uſual* (e) *phraſes* of the *Holy Ghoſt* in the *Scriptures*; but alſo from the *univerſal conſent* of all *learned men*, both *Divines* and *others*, and even of (f) *Heathens* alſo: This Gentlewomans *promiſe* then being made to the Gentleman her Friend *alone*, as was his alſo to her, and neither of both to God, is therefore to be taken for a *meer Promiſe*, but no *Vow*.

(a) *Votum ſoli Deo ſit, ſed Promiſſio poteſt fieri etiam Homini.* quit. 2. 2. q. 88. 5 ad. 3.

(b) *Promiſſio Deo facta eſt eſſentia voti,* Ibid.

(c) Pſal. 76. 11. *Vow and pay unto the Lord your God &c.*

(d) Numb. 21. 2. Judg. 11. 30. 1 Sam. 11. 21.

(e) Judg. 11. 36. Pſal. 56. 12.

(f) *Sponſio quâ obligamur Deo.* Cic. 2. Leg.

§. 2. If for more confirmation thereof, ſhe bound her ſelf alſo by *Oath*, as it is not unlike, yet it is no more for all that but a *meer promiſe* ſtill, and not a *Vow*; for albeit the very uſing of an Oath be a *calling in of God* into a buſineſs, and the *perſon* that taketh an *Oath* doth thereby ſet himſelf in the *preſence of God*; yet an *Oath* calleth him in only to be a (a) *witneſs*, without any intent to make him a *party* to the *buſineſs*, whereas in a *Vow* he is made a *party*, and not only a *witneſs*; whereunto agree thoſe forms ſo frequent in *holy Scripture*, in Oaths both *aſſertory*, and *ſtipulatory*; (b) *The Lord be witneſs between us*: (c) *God is my witneſs*: (d) *I take God to Record*, and the like: for even as when a *promiſe* is made unto God, whereunto for the more *ſolemnity*, the *preſence* of ſome men is required as *Witneſſes*, ſuch a *Promiſe* is to be held for a *Vow*; becauſe it is made to God *alone*,

(a) *Farare nihil eſt aliud quàm Deum Teſtem invocare.* 2. quæſt. 2. qu. 89 1. ex. *Aug. de ver. Apoſt. Serm.* 28. *quod affirmas, ſi Deo Teſte promiſeris, id tenendum eſt*, Cic. 3. de Offic.

(b) Gen. 31. 50. Judges 11. 10. Mal. 2. 14. (c) Rom. 1. 9. 1 Theſſ. 1. 5. (d) 1 Cor. 1, 23. Phil. 1. 28.

alone, although in the *preſence* of Men: So on the other ſide, when a *Promiſe* is made unto *ſome Man*, whereunto for the *more aſſurance*, the *preſence* of God is required as a *witneſs*, ſuch a *Promiſe* is not to be held for a *Vow*, becauſe it is made unto Man *alone*, although in the *preſence* of God.

Q. 3. Nay further, if the Gentlewoman when ſhe thus *engaged* her ſelf, did uſe theſe very words [*I VOW TO GOD*] or words to that effect, as we know is often done in *ſolemn Promiſes*, between Man and Man; yet neither is that ſufficient to make it properly a *Vow*; for to judge rightly when queſtion is made, concerning any particular *promiſe*, whether it be a *Vow*, yea or no, we are not to be guided ſo much by the *forms* of *ſpeech*, (which are ſubject to change, impropriety, and many defects) as by the true intention and purpoſe of the *parties*, eſpecially the *Promiſer*. Now what was the whole *intent* and *purpoſe* of theſe *Parties*, when they mutually bound themſelves in ſuch ſort, as in the *Caſe propounded* is laid down, no reaſonable man can be ignorant; even this and no other, to give as good *aſſurance* as they could *deviſe*, either to other, and to receive

the like *assurance* again, that the *thing* by them *agreed on* and *promised*, should be *faithfully performed*; and if either *Oaths* or *Protestations*, were also *used* by way of *Confirmation*, they are all in *common intendment* to be taken, as *tending* to the *self same purpose*, without looking at any further thing; and clearly where the *Promiser* hath no intention to *bind* himself to *God*, but to *Man* only, the *Promise* so made is no *Vow*, whatsoever *formality of words* may be used in the making of it.

Q. 4. Neither is the *examination* of this Point a *curiosity* either in it *self fruitless*, or *impertinent* to the *Case in hand*; for albeit, in that which seemeth to be the very *main point* of all, *viz. the power of binding the Conscience*, there be no *material difference* between a *Vow*, and an *ordinary Promise*; a *lawful Promise* no less *binding* unto performance, than a *lawful Vow*; and an *unlawful Vow* no more *binding* than an *unlawful Promise*; yet there is some *difference* between them, and that of *some importance too*, in respect of the *relaxation* of that *Bond*: for since it belongeth to *him* to whom a *bond* is made, to grant a *release* thereof: It belongeth therefore to *God alone* to *release*

leaſe the *obligation* of a *Vow*; and no man hath power ſo to do, becauſe the *Vower* by his *Vow*, bindeth himſelf to *God*, not to *Man*; whereas the *obligation* of a *meer Promiſe*, wherein the *Promiſer* bindeth himſelf but to *ſome Man*, may be *releaſed* by *that Man*; and a *releaſe* from him is to the *conſcience* of the *Promiſer* a *ſufficient diſcharge* from the ſaid *obligation*: which Conſideration of what *uſe* it will be in the *preſent Caſe*, will in the due place further appear. In the mean time we have *evidently proved*, that this Gentlewoman *bound her ſelf* by *Promiſe* only, and not by *Vow*.

Point II.

§. 5. We are next to enquire concerning the *validity* thereof, whether or no the Gentlewoman (a) *having an Husband* at that time, were ſo *diſabled* in that *reſpect* from making ſuch a *promiſe*, that the *promiſe* then made by her, without the *Husbands conſent*, was *utterly void* from the very beginning: For the Wife is under

(a) Rom. 7. 2. For the woman which hath an husband is bound by the law to her husband ſo long as he liveth.

(b) *the*

(b) Rom. 7. 1. (c) 1 Cor. 7. 4. (b) *the Law*, and (c) *under the power of her Husband*, and so is not *sui juris*, nor can binde her self by *Vow*, *Oath*, *Promise*, or otherwise without the *privity* and *consent* of her *Husband*; which *consent* we may presume this Gentlewoman never had, the *promise* being of that *nature*, that it had been not only *immodesty*, but even *madness*, at all to have sought it. And it is (d) Numb. 30. 1. certain from the (d) *Law of God*, by *Moses* (to the equity whereof *Christians* are still bound, because its founded upon *right Reason*, and the *light of Nature*) that every *Vow* and *Promise* made by a *person* that of *right* hath not *power* to make it, is *de jure nullum*, altogether void from the first instant, and *bindeth* the Party no more than if it never had been made.

¶. 6. If any *Scruple* shall arise from this *Consideration*, that albeit the *promise* made by the *Wife* in her Husbands life time, *bind* her, not without his *consent*, so long as he liveth, because she is all that while under his *power*; yet after that she is *loosed* from the *law of her Husband*, by his *death*, it shall thenceforth *binde* her, because she then

then becometh *ſui juris*: I ſay, this maketh no *difference* at all in the *Caſe*; for this is a *general Rule*, that *what* (b) *act ſoever had a nullity in it at the firſt, when it was done, cannot by any ſucceeding tract of time grow to be of force.* As if a young Schollar ſhall be *inſtituted* to a *Benefice*, being not of *lawful years*; or a young *Heir* make a *ſale* of his *Lands* during *minority*, the *inſtitution* and the *ſale*, as they were both *void* at the *beginning*, ſo they ſhall continue *void*, as well after the *Clerk* is of *lawful years*, and the *Heir* at full *age*, as before; ſo that to judge of the *validity* of any *Vow*, *Promiſe*, or *Covenant*, reſpect muſt be had to (c) that *very time* wherein it was *made*, and to the *preſent condition* of the *perſon* at that *time*, and not to any *time* or *condition before* or *after*: If then there were indeed, a *nullity* in this Gentlewomans *Vow*, at the *time* when ſhe *made it*, there is a *nullity* in it ſtill; and if it were indeed of no force to *bind* her *then*, neither is it of any force to *binde* her *now*.

(b) *Quod initio vitioſum eſt, non poteſt tractu temporis convaleſcere*, L. 29. F. de Div. Reg. ſo.

(c) *In ſtipulationibus id tempus ſpectatur quo contrahimus.* L. 18. F. eodem.

§. 7. But

Q. 7. But after due pondering of the *matter*, I rather think, that there was not a *nullity* in the *promiſe* at the *firſt*, neither (ſuppoſing it had been rightly *qualified* in other reſpects) was it *void* upon this *ground*; becauſe although ſhe were not *ſui juris abſolutè*, it is ſufficient yet, that ſhe was ſo *quantum ad hoc*. For a *perſon* that is under the *power* of another, hath yet *power of himſelf*, (and ſo is *ſui juris*) to *diſpoſe* of all ſuch things, as by the *free diſpoſal* whereof, the *proper right* of him, under whoſe *power* he is, is no way *prejudiced*; but in whatſoever may be *prejudicial* to the *other* in any of his *Rights*, he is *juris alieni*: neither may *diſpoſe* thereof without the *others conſent*; and if ſuch a *perſon* ſhall make a *Vow*, or other *Promiſe* concerning any of *thoſe things*, wherein he is *ſui juris*, ſuch *vow* or *promiſe* ſhall *ſtand good*, and is not *void* (though poſſibly it may be *vitious* in other reſpects) from the *inability* of the *perſon* that *maketh it*: As for example, if a *Servant* ſhall *promiſe* to his *own Father*, to *work* with him a day or two in *Harveſt*, this *promiſe*, unleſs his Maſter *conſent* thereunto, ſhall be *void*, becauſe the *Maſter* hath a *right* in the *Servants work*, to which *right* it

it would be *prejudicial*, if the *Servant* ſhould *diſpoſe* thereof after his own *pleaſure*; but if ſuch a *Servant* ſhall *promiſe* unto his *needy Father* to *relieve* him from time to time with a *third* or *fourth part* of all ſuch *wages* as he ſhall receive for his ſervice, this *promiſe* ſhall be *good of it ſelf*; neither ſhall the *Maſters conſent* be requiſite to make it ſo, becauſe the *Maſter* hath no right at all in the *Servants wages*; wherein to be *prejudiced* by the *Servants diſpoſing* thereof according to his own minde: Now foraſmuch as the *Husbands right* and *power* over the *Wife ceaſeth* together with his *life*, (as the Apoſtle (*a*) expreſly teacheth) and ſo cannot be *prejudiced* by any *act* of the *Wife* done after his *Deceaſe*; It is manifeſt that the Wife is *ſui juris* to make a *vow* or *promiſe* during her Husbands *life time*, concerning ſomething to be done after his *deceaſe*, in caſe ſhe *overlive* him, becauſe his *right* will be *expired* before the *performance* of the ſaid *vow* or *promiſe* be due; as to give inſtance in a Caſe not much unlike to this in queſtion: A Wife *eſtated* upon her Marriage in a *Jointure* or *Annuity* for her life of an 100 *l. per Annum*, maketh

(a) Rom. 7. 2. 3.

keth a *promise* in her Husbands *life time* to one of her *younger Brothers*, that hath but short Means, to allow him thence forward out of the said *Estate*, 10 *l.* yearly toward his better Maintenance; this *promise* is *void* unless the *Husband consent*, because the *performance* thereof would *prejudice* him in that *right* which he hath during his own life in the *Revenue* of all the *Lands* and *Annuities* estated upon the Wife in *Reversion*; but if such a Wife shall *promise* to her said *Brother* to allow him the said yearly sum of 10 *l.* after the *decease* of her Husband, in case she *survive* him, this *promise* is *good*, though made by the Wife in her Husbands *life time*, and without his *consent*, because the Husbands *right*, (being to cease before the Promise is to be performed) cannot be *prejudiced* by the *performance* thereof: And this I finde agreeable to the *best Casuists*, whose peremptory opinion it is, that (b) *Husbands* and *Masters cannot disannul such* Vows *as their Wives and Servants make concerning things to be performed at such times, as they shall be from under their power.* Which *position*

(b) *Vota uxorum vel servorum exequendaillo tempore quo fuerint sui juris, mariti vel domini non possunt irritare.* Nav. Man. Num. 65. & *alios.*

ſition if it be *true* (and I yet ſee no reaſon why it ſhould not) then doubtleſs this Gentlewomans *Vow* made to *her Friend*, though in the *life time*, and without the *conſent* of her Husband, was not *originally void* from the inability to make it, upon this reſpect, that ſhe was not *ſui juris* ſo to do.

Point III.

¶. 8. But though I dare not ſay, neither do I think, that there was a *nullity* in it, in reſpect of the perſon, to make it *void* that way; yet it cannot be denied, but there was much *obliquity* in it, in reſpect of the *matter*, to make it otherwiſe *utterly unlawful:* in which Point much need not be ſaid, becauſe the *truth* thereof will ſoon appear; for there was in it manifeſtly a *threefold obliquity*, and thereby alſo a *breach* of three *ſeveral Commandments*. The *firſt obliquity* was in reſpect of the *unlawful affection* from which it *proceeded*; which being *placed* upon another than the Husband, and that in ſuch a *high degree*, as to produce a *promiſe* of this *kinde*, muſt needs be *vitious*, both for the *object* and for the *meaſure*, and ſuch *inordinate affection* by the Analogy

of

of our Saviours (a) *expreſsi-*
(a) Mat. 5. 28. *on* of the *Law*, is a *violation* of the *Chaſtity* of the *heart*, and ſo a *breach* of the *Seventh Commandment*. The *ſecond obliquity* was, the want of that true *conjugal love* which ought to be between *Huſband* and *Wife*, who ought to have a *mutual* (b) *complacency* and *delight* the one in the other, and to be (c) *ſatisfied* at all times with the *Love*, *Comfort*, and *Society* of the one of the other; which *Love* if it had been ſo throughly *rooted* and *ſeated* in the Gentlewomans *heart*, as it ought to have been, would have *cruſhed* all *motions* of *unlawful affection* towards a Stranger in the *ſhell*, long before they could *grow* to ſuch *ſtrong Reſolutions*, as by the making of this *vow* it appeareth they did; for it is not to be imagined that ſuch a *vow* as this could be made, and really intended to be *performed*, but we muſt needs ſuppoſe in the parties ſo *vowing*, a kinde of *wearineſs* at the leaſt, if not rather ſome *inward loathing* of of the preſent *Yoak*; which being contrary to that *honour* that Martyred perſons *owe* to their *yoak-fellows*, is ſo a *breach* of the *Fifth*

(b) Prov. 5. 18. Eccleſ. 9 9.

(c) Prov. 5. 19.

Com-

Commandment: A *Third obliquity* there was alſo as a *breach* of the *Tenth Commandment*, againſt thoſe expreſs words [*Thou ſhalt not covet thy Neighbors Wife*] every Man and Woman being to *content* themſelves with that *lot*, which by Gods Providence hath *befallen* them, as in all other things, ſo eſpecially in that which is of the *greateſt Weight*, the *lot* of *Marriage*, without *coveting* or *luſting after* that which it hath pleaſed the *Wiſdom* of God already to *diſpoſe* upon *another*; this Gentlewomans *promiſe* then being ſuch, as (if it ſhould be brought to an *impartial Tryal* before that *Tribunal* which God hath erected in every ones *conſcience*, and according to the *tenor* of that *Divine Law*, whereof no *Chriſtian* ſhould be *ignorant*) could not be reaſonably *acquitted* from any *one* of theſe *ſinful Obliquities*, but not poſſibly from them *all*, we may conclude to have been an Act *utterly unlawful*.

Point IV.

¶. 9. But becauſe a Man may contract an *Obligation* by an *act* not free from *Obliquity*, as the ſaying in ſuch Caſes is [*Fieri*

non debet, factum valet] and we have a *Ruled case* for it in the *Covenant*, which the *Princes* of *Israel* made with the *Gibeonites*, which though (b) *sinfully made* at the first, was (c) *necessarily* to be *kept* afterwards: We are therefore to enquire into a *Fourth Point*, Whether the Gentlewoman having *de facto* bound her self, by such an *unlawful promise*, be still, by virtue of the said *promise*, bound in *conscience* to the performance thereof, or not? To answer directly to the Point, *I take it she is not bound thereunto*; for that saying [*Fieri non debet, factum valet*] hath place only there, where the *obliquity* that maketh the *act unlawful*, may be severed from the substance of the *matter*, about which the *act* is *conversant*; as when a Man *voweth* to do something, which is not in it self, and for the substance of the matter *simply unlawful* to be done; but yet *voweth* it, either *rashly*, and without *due advertisement*, or for some *indirect* and *unwarrantable end*, or upon *slight* and *insufficient inducements*, or the like, any of these *Obliquities* are enough to make the *vow unlawful*, in respect of the *act* of *vowing*; yet

(b) Josh. 9 14, &c.
(c) *Ibid.* ver. 19, 2 Sam. 21. 1, 2.

yet becauſe theſe *Obliquities* do not neceſſarily paſs upon the *matter* it ſelf, or the thing *vowed*, but may be ſevered from it; therefore though the *act* of *vowing* were *ſinful*, the *Vow it ſelf* for all that may *ſtand good*, and *bind* the Party to *performance*; but where the *ſinful obliquity* paſſeth upon the *ſubſtance of the matter*, or adhereth inſeparably thereunto; there not only the *act* of *vowing* is *ſinful*, but the *performance* alſo becometh *unlawful*: In which *Caſes* thoſe other ſayings ought rather to have place, *Juramentum non debet eſſe vinculum iniquitatis, in malis promiſſis reſcinde fidem, in turpi voto mata decretum*, &c.

¶. 10. If it ſhall be ſaid, that this *difference* being admitted, will nothing avail the Gentlewoman in our preſent Caſe, to free her from the *obligation* of her ſaid *promiſe*; becauſe here the *matter* of *promiſe* ſeemeth not to be in it *ſelf unlawful*, eſpecially on her part; for if the Gentleman her Friend, were preſently *free* from the *bond* of *Matrimony* by the *death* of *his Wife*, as the Gentlewoman now is by the *death* of *her Husband*, they might *perform* what they had *promiſed* either to other, by joyning themſelves in *Matrimony*, and that without

ſin, which is an argument that the *ſinful obliquity* was only in the *act of promiſing*; which therefore they ought to *repent* of: but doth not cleave to the *matter* of the *promiſe*, which therefore they ought not to *violate*. To this I anſwer, what in my opinion is true, That if *both* the Parties were now actually *free* from the *Marriage bond*, they not only *lawfully might*, but were in *conſcience bound* (unleſs ſome other *lawful impediment* ſhould hinder) to *joyn* themſelves together in *Matrimony*, becauſe none of the *forementioned Obliquities*, which made the *former act* of *promiſing unlawful*, would fall upon the after-*act* of *Marriage* to make it *unlawful*. But that *Allegation* is not direct to the Point in hand, nor to the Caſe as it is propounded; for it may be obſerved from the very *form* of the *propoſal*, that the *matter* of the *promiſe*, wherein the Parties *interchangeably* bound themſelves, was not to *Marry* together, when they ſhould be *both free*; upon which *falſe ground* the Objection runneth; that was indeed the *thing* they aimed at therein; but the *end* is one thing, and the *matter* another: but the very *matter* of the *promiſe* was, the *continuance* of their *mutual affection* either

to

to other, with a *reſolution* to *ſtay* the one for the other, when either Party ſhould happen to be *free* from the *bond* of the *preſent Matrimony*, till the other ſhould be alſo *free*. The continuance of which *affection* and *reſolution*, will upon examination be found ſubject to *all*, or *ſome* of the *three Obliquities* aforeſaid; and therefore as ſuch an *affection* and *reſolution*, could not be *entertained* at the firſt without *ſin*; ſo neither can they be now *continued in* without *ſin*; for ſo long as they *continue*, the firſt of the ſaid *Obliquities* remaineth ſtill, both on his part and hers; the *ſecond* indeed by the *death* of the *Husband* is *ceaſed* on her part, but *remaineth* ſtill on his; and the *third* contrarily being on his part *ceaſed*, *remaineth* ſtill on hers, as will evidently appear to the underſtanding of any Man, that ſhall take the pains to examine it.

§, 11. Yea, and it is further to be conſidered, that the *continuance* of ſuch an *affection* and *reſolution* may be likely to expoſe as well the *one* as the *other* to the *aſſault* of more ſtrong and dangerous *temptations*, now ſince the *Husbands death* than before. The *danger* on the Gentlemans part, this,

leaſt by how much he is now by the *Husbands death*, put into a *nearer poſsibility* of enjoying his *unlawful hopes*, he ſhould grow into ſo much the deeper *loathing* of his own *bed*, and ſo much the earneſter longing that, that which is now the *only obſtacle* to the fruition of his deſires were *removed*; of which thoughts, who can tell how *fearful* the *iſſues* might be? the *ſlye Enemy* being moſt ready at all times, to *practiſe* upon the *corruption* that is in the *naughty heart* of Man; but eſpecially having a *mighty advantage* againſt him, when he hath got his *conſcience* as it were in a *ſnare*, by the engagement of ſome *vow*, *promiſe*, or *ſettled reſolution*. And then on the Gentlewomans part, the *danger*, this, leaſt having by her own *voluntary act* debarr'd her ſelf, of that which is the only allowed *remedy*, namely *Marriage*; ſhe ſhould by the juſt Judgment of God, be left to the *rage* of the Diſeaſe of *burning Luſts*: for upon what *ſound* warrant can ſhe be *confident*, or with what *Reaſon expect*, that God ſhould either *preſerve* her from, or *aſſiſt* her againſt *temptations* in that kinde; though ſhe ſhould ſeek it of him with *Faſting*, and *Prayers*, and *Tears*, ſo long as ſhe tempteth

Him

Him by perſiſting in a *wilful obſtinacy*, againſt that means of *Remedy* which He hath appointed ? Indeed, where the *hand* of *God* himſelf hath *prevented* the *uſe* of the *Remedy* (as if the Husband ſhould be *long detained* in a *Foraign Land*, or *held* in *cloſe Priſon*, or *taken* with a *dead Palſie*, or ſome other *bodily impotence*, or the like) there the Wife might comfortably implore *Gods aſſiſtance* to preſerve her from being *overcome* by *carnal temptations*, and aſſuredly reſt upon it by *faith*, if ſhe be not wanting to her ſelf, in putting to her own *utmoſt endeavours*, becauſe ſhe hath a *Promiſe* to reſt upon for that purpoſe; and God who is *faithful* in all his *Promiſes*, is alſo *faithful* in this, of *not ſuffering* his *Servants to be tempted beyond their ſtrength:* but for the Wife, by ſome *inconſiderate act* of her own, wherein ſhe *wilfully* and *obſtinately* perſiſteth to *refuſe* the *appointed means*, and yet to expect Gods *aſſiſtance* nevertheleſs, for which ſhe hath no *Promiſe*, is a fearful *tempting* of God; and it is but a *juſt thing* with God, and ſhe ſuffereth it *worthily* for her *preſumption*, if ſhe be *left* to her ſelf, and ſo *wreſtle* with the *temptation* by her *own ſtrength*, and ſo be *overcome* thereby:

For God who hath after a sort *tied* himself by his *free* and *gracious Promise* to protect us in *Via Regia*, so long as we walk in the ordinary known way that he hath *appointed* for us, hath no where *bound* himself to *vouchsafe* us the like powerful protection *Extra viam Regiam*, if we *refuse* that *high way*, to *walk* in *by-paths* of our own choosing; which present *dangers* on both sides, and the former Reasons laid together, do sufficiently prove, that the Gentlewoman is not at all *bound* to *perform* her said *unlawful Promise*.

Point V.

§. 12. Hitherto we have proceeded in *genere judiciali*, by considering of the *nature* and *validity*, *lawfulness* and *obligation* of the *Promise* for the *time past*: Now we are to deal in *genere deliberativo*, and to consider what in *Christian Wisdom* is meetest to be farther done, for the better both *quieting* and *regulating* of the *Conscience* for the *time to come*; wherein, submitting to Men of *better judgments*, and *experience*, I give my advice as followeth, *viz.*

First, That the Gentlewoman out of the

the ſerious conſideration of the *Promiſes*, be brought to a through feeling of the *grievouſneſs* of thoſe *ſins* which ſhe hath *committed* againſt God, and wherein ſhe hath ſo long *continued*, that ſo ſhe may not only be *humbled* in his ſight with true *contrition* of *heart*, and *remorſe* for the ſame, proportionably to the greatneſs thereof; but alſo be provoked to a proportionable meaſure of *thankfulneſs* unto him, for his gracious goodneſs in *reſtraining* her *unlawful affections* from breaking out into *actual uncleanneſs*, and *preſerving* her when ſhe had run out ſo far in an *evil way*, from ruſhing into more *deſperate Extremities*; for, *Erranti nullus terminus:* as a ſtone that tumbleth down a ſteep hill, ſo Mans *crrruption*, when it is once ſet on *going*, hath no *ſtay* of ſelf till it come to the bottom of *Hell*, unleſs the Lord lay a *ſtop* in the way: and it is to be acknowledged a bleſſed act of Gods *merciful Providence*, when we have let looſe the *reins* to our own *luſts* in any kinde, if they be *bridled* from running headlong into all *exceſs* of *wickedneſs*; *great ſins* require more than *ordinary Repentance*, and *great mercies* more than *ordinary Thankfulneſs*.

§. 13.

§. 13. *Secondly*, That having thus *humbled* her self before God by *inward Contrition*, she also make an *outward free Confession* of her said *sins*, to him whom God hath delegated a Ministerial Power to *remit sins*, that she may receive *Comfort* and *Absolution* from his Mouth; I mean the *Priest*: and this I think meetest to be done to the *Bishop* of the *Dioceſs*, with one or more of his *Presbytery*, such as he shall think good to take to him to *assist* him; or else to some *other* by *his appointment*: because the *Bishop* is the *chief Pastor*, to whom the *care* of *Souls* most immediately belongeth, within his *own Dioceſs*; besides, that both the *quality* of the *person* (if she be of *eminent Place* and *Rank*) and the *weightiness* of the *case*, make it so much the more proper for his *cognisance*: But howsoever it would be done to a Man of *approved wisdom*, and such an one, as will be both *compassionate* and *secret*, wherein the more *freely* she shall make *confession* of her said *sins*, and the more *chearfully* she shall subject her self to perform such further *Acts*, whether of *Humiliation* or *Charity*, as the *Bishop* or *Priest* shall advise to be done, in testimony of her *unfeigned Repentance*, the more

more *ſound comfort* undoubtedly will the *ſentence* of *Abſolution* bring unto the *Soul*.

§. 14. This done, then *thirdly*, that ſhe *endeavour* by all *fair means*, that the Gentleman alſo her *friend* and *partner*, in the aforeſaid *Promiſe*, may be brought to the like *ſight* and *acknowledgement*, of the *great ſins* that were enwrapped in that *act*, and to a *true perſwaſion* withal, that ſo long as he *continueth* in the former *unlawful affection* and *reſolution*, he is not only ſtill *under* the *guilt* of thoſe *ſins*, but alſo in *near danger* (without Gods great mercy preventing it) of falling into *other* and *greater ſins*, for which purpoſe it will be expedient, that he be *truly* and *effectually* dealt withal, (yet with as much *lenity* as the *ſtate* of his *Soul* will ſuffer, and with all poſſible *ſecreſie*) and that by ſome ſuch perſon eſpecially as he holdeth a *reverend Opinion* of both for *Learning* and *Piety*; and to procure that this be done, the Gentlewoman ought to take it into her *own* eſpeciall *care*; which it will concern her to do, not only in *Chriſtian Charity* for the *good* of his *Soul*, but in *Chriſtian Wiſdom* alſo for her own future *beneſit* and *ſecurity*.

§. 15.

℣. 15. For when he shall be once throughly *convinced* in his *judgment* and *conscience*, of the *unlawfulness* of the *Promise* made between them, and of the *sinful inconveniences* that attend the *continued purpose* of *fulfilling* it, there is a fair way open for that which is *next* and *fourthly* to be done, *viz.* That he be then earnestly moved for his *Relaxation* of the said *Promise* to the Gentlewoman, which (being it was but a *meer Premise*, and no *Vow*, as in the *first Point* hath already been shewed) he hath in himself a *full power* to make, and this also to be done in the *presence* of such Persons, as they shall make *choice* of betwixt themselves to be *witnesses* of the said *Release*; for although the *Promise* being *utterly unlawful*, hath no power to *binde*, and so there needeth no *Release*, as of *absolute necessity*, in regard of the thing it self; yet such *Release* may be very *behoofeful* in regard of the Gentlewomans *person*, and for the *quieting* of her *conscience*, in case there should remain any *fears* or *scruples* behind, lest perhaps her *promise* should *still bind* her; for as *Satan* laboureth to *benum* the *conscience* with *security* to make men *bold* to *commit sins* without *scruple*, till he has *drawn* them into

into the *ſnare*; ſo when he ſeeth them *offer* to get out of the *ſnare* again by *Repentance*, he is very cunning to inject *needleſs Scruples* and *fears*, if poſſibly he can, to hold them in by means thereof; wherefore I hold it very *expedient* that ſuch a *Releaſe*, if it may be *obtained*, be not *be neglected*; for thereby the *binding power* of the *Promiſe*, though we ſhould ſuppoſe it *lawful*, ſhould be quite taken away, ſo as there need no ſcruple to remain: *Abundans Cautela non nocet*, is a ſafe *Aphoriſm*; as wary men when they *pay monies*, beſides ſeeing the *Book croſt*, will crave to have an *Acquittance*: So it may be ſome *ſatisfaction* to the Gentlewomans *mind*, to have a *ſolemn Releaſe* before *witneſs*, which ſay it ſhould be *more than needeth*, yet can do no *harm* howſoever.

§. 16. *Fifthly*, that the Gentlewoman all the while *before*, and ſo ever *after* (that time only excepted, when the *Relaxation* ſhould be made, for then it is requiſite, ſhe ſhould be perſonally preſent) carefully *avoid* the *company* of that *Gentleman*, and *he* likewiſe *hers*, ſo far as conveniently may be; but at leaſtwiſe, by no means *converſe together* with any *familiarity*, eſpecially in *private*; leſt the former *unlawful affection* ſhould

ſhould *rekindle* in either Party, and ſo the *diſeaſe* after ſome meaſure of *cure* grow to a *relaps*, which many times proves *more dangerous* than the *firſt malady*; for commonly when the *unclean ſpirit* is *ejected* by *Repentance*, if once he make himſelf *maſter* of the *heart* again (as he will attempt it, and without a good watch haply effect it) he will be ſure at the *re-entry*, to come with a *new ſtrength*, and that *ſevenfold*, to what he had before, and *needs muſt the end of that man be worſe than the beginning*: ſhe muſt therefore reſolve to ſhun all *likely occaſions* of falling again into the ſame *ſnare*, ſo far as the *quality* of her *perſon* and condition, and the *common affairs* of *life* will permit: And ſhe had need alſo to uſe her beſt *care* and *diligence* (praying to God daily for Grace to ſtrengthen her thereunto) to *withſtand* all *wicked temptations* of the *fleſh* that ſhe be no more *foiled* thereby, neither *entangled* again in ſuch *ſinful inconveniences*, as by Gods *mercy* ſhe ſhall be now *freed* from.

§. 17. If in theſe *Directions*, I be thought to *deal* with too much *rigour* and *ſtrictneſs*, it would be conſidered:

Firſt, that its much better to put the *pa-*

tient

tient to a little more *pain* at the firſt, than by *skinning* the *wound* overly, to *heal* it *deceitfully*; and to ſuffer it to *rankle inward*; which will breed a great deal more *grief* at laſt.

Secondly, That ſince all men (through corrupt *ſelf-love*, and privy *Hypocriſie*, cleaving to our *depraved nature*) are *partial* towards *themſelves*, and apt to deal more *favourably* with their *own ſins*, than they ought; it is therefore ſafeſt for them (in their own Caſes eſpecially) to encline to *ſeverity*, rather than *indulgence*.

Thirdly, That there may be a *mitigation* uſed of the *preſent Directions*, according as the ſtate of the *Patient* (in the ſeveral variations thereof) ſhall require; but that (for the avoiding of *partiality*) not to be permitted to the *ſole liberty* of the *party himſelf*, but rather to be done by the *advice* of a *Ghoſtly Phyſician*, who if he be a man of ſuch *wiſdom* and *moderation*, as is meet, will I doubt not allow a greater *indulgence* in caſe ſhe ſee it *expedient*, than it could be *ſafe* for the Party her ſelf to take of her own head.

Fourthly, That in all this Diſcourſe, I take not upon me to write *Edicts*, but to

give

give my *advice*, that is to say, not to prescribe to the *judgement* of others, if any shall see cause to *dissent*, but to deliver my *own opinion* (being requested thereunto by a Reverend Friend) with such a *faithfulness* and *freedom* as becometh me to do; and truly those *Parties* whom it most *concerneth*, ought not to *blame* me for it howsoever; inasmuch as there can be no cause to *suspect* that I should be carried with any *personal respects* to be *partial* either *for* or *against* either of them; so God is my *witness* whom I desire to *serve*, I had not any *intimation* at all given me, neither yet have so much as the *least conjecture* in the World, who either of them both might be.

The CASE of a
MILITARY LIFE.

SIR,

IN *referring over* your friend to me, you have *pitched* upon one of the *unfitteſt* perſons in the World, to be *conſulted* in *caſes* of that *nature*; who am altogether a ſtranger to the *Publick Affairs* of *Chriſtendom*, and underſtand nothing at all of the mutual *Intereſts*, *Relations*, or *Tranſactions* of *Forreign Princes* or *States*; yea ſo little curious have I been to inform my ſelf, ſo much as where the *Stages* lay of the *chiefeſt Actions* of theſe *latter times* abroad, or what perſons were *engaged* therein; that I have ſomething *pleaſed* my ſelf (perhaps too much) with my *own ignorance* in our *home Affairs*, accounting it among the *happineſſes* of my *privacy* and *retiredneſs*, in theſe *unhappy times*; that amidſt ſo much *fury* and *bloodſhed* on every ſide, it was never my hap to be within the view of

any *Battle* or *Skirmish*; nor did I ever see so much as a *Pistol discharged*, or a *Sword drawn* against any *single person*, since the beginning of the *War*. I could have wished therefore, since my *opinion* herein is *desired*, that I had had the *opportunity* to have *advised* with some more *knowing* Men, and of greater *experience* and *judgement* than my self in these *matters*; or at least, that you had sent me, together with the two enclosed Letters, a *transcript* of your *Answer* (whose *judgement* I do with great reason very much *value*) unto the *former* of them; for there I assure my self, I should have *met* with such *Materials* as would have *served me* for a good *foundation* to work upon; yet to satisfie your *desire*, so far as in me lieth, and the rather for the *Gentlemans sake* your *friend*, (who though *unknown* to me by *face*, or till the receipt of your Letter, so much as by *Name*; yet by his Letters appeareth to be a Person of *Piety* and *Ingenuity*, and a great Master both of *Reason* and *Language*) I have endeavoured (with reservation of Place for second thoughts, and submission to other Judgements) to declare what my present *apprehensions* are concerning the

whole

whole buſineſs; wherein the *reſolution* of ſuch *doubts*, as in point of *conſcience* may ariſe, or of the *moſt* and *chiefeſt* of them, will (as I conceive) very much *depend* upon the *conſideration* and right *application* of theſe *Four things*, viz.

I. *The different ſorts of Mens imployments in general.*

II. *The nature of the Souldiers imployment in particular.*

III. *The end that Men may propoſe to themſelves in following the War; or what it is that chiefly induceth them thereunto.*

IV. *The condition of the Perſon ſo imployed, or to be imployed.*

I. *Conſiderations of Mens Imployments in general.*

1, MEns *imployments* are of two ſorts. The *one* of ſuch as any man may (without blame from *others*, or ſcruple within himſelf) follow, meerly upon his own *ſcore*, if he finde himſelf in ſome meaſure *able* for it, and have a *minde* thereunto; he hath a *power* in himſelf (and that *jure proprio*, by a *primitive* and *origi-*

nal right, without any neceſſary *derivation* from others) to *diſpoſe* of himſelf, his time and induſtry, in that way; for the exerciſe of which *power*, there needeth no ſpecial or poſitive *warrant* from any other perſon, but it is preſumed he is (as in relation to *others*) ſufficiently *warranted* thereunto in this, in that he is not by any *Superior Authority*, Divine or Humane, *forbidden* ſo to do; and upon this account it is, that Men *betake* themſelves, upon their *own choice* and *liking*, to *Husbandry*, *Merchandize*, *Manual Occupations*, the *ſtudy of the Law*, &c.

2. But *another ſort* of *Imployments* there are, whereunto a man hath not a *juſt right* primitively and of himſelf, neither may he *lawfully exerciſe* the ſame meerly upon his *own choice*, but it is neceſſary, that that *power* ſhould be *derived* upon *him* from ſome ſuch perſon or perſons, as have *ſufficient Authority* to *warrant* him for ſo doing: Such is the *Imployment* of a *Judge*, a *Conſtable*, an *Arbitrator*, *&c*, which are therefore ſaid to be *juris delegati*, becauſe the *right* that any man hath to ſuch *Imployments* accrueth unto him by virtue of that *Authority* which he receiveth by *Delegation* or

or *Deputation* from ſome *other* that hath a *right* by *Command*, *Election*, *Nomination*, or otherwiſe to *Empower* him thereunto, whence are thoſe uſual forms, *Quo jure*, *Quo warranto? Who made thee a Judge? By what Authority doſt thou thoſe things?* or, *Who gave thee this Authority?* A man may betake himſelf to the *Study*, and ſo to the *Practice* of the *Laws*, of his own accord, but he may not take upon him to be a *Judge* without *Commiſſion* from his *Sovereign*; ſo he may follow *Husbandry*, and *Merchandry*, upon his own *choice*, but he may not do the Office of a *Conſtable*, unleſs he be *choſen* by the *Neighbours*; or of an *Arbitrator*, unleſs *choſen* by the *Parties* thereunto.

3. Now although as well the *one ſort* as the *other*, after a Man hath *addicted* himſelf to the *one*, or is *deputed* to the *other*, may not unfitly be termed his *Particular Calling*, and the *latter* perhaps with better *propriety*, than the former, (for the word *Calling* properly importeth the *Action* of ſome other perſon) yet according to the common Notion, which by cuſtom of ſpeech among us, we have of theſe terms [*The General and the Particular Calling*]

the *Imployments* of the *former ſort*, are uſually taken to be the *Particular Calling* of Men; and thoſe of the *latter ſort*, will be found (if well conſidered) to fall rather under the *General Calling*, as branches or parts thereof, inaſmuch as the *exerciſe* of ſuch *Imployments*, is a part of that *moral duty*, which all Men (according to their ſeveral reſpective Relations) ought to perform to others, being by them *empowered* thereunto, upon the tie of *Obedience*, *Contract*, *Friendſhip*, &c. but for *diſtinction ſake*, as the *Latins* make a *difference* between *vitæ inſtitutum* and *munus*, we may call thoſe of the *former ſort*, *Mans Profeſſion*, and thoſe of the *latter ſort* his *Office*; ſo a Man is by *Profeſſion* a *Lawyer*, by *Office* a *Judge*; by *Profeſſion* a *Husbandman*, by *Office* a *Conſtable*.

4. To bring this *Diſcourſe* home to the *preſent buſineſs*, we are next to enquire, to whether *ſort* of the *two*, the *Imployment* of a *Souldier* doth more *properly appertain*; that is, whether we are to conceive of it as a *Profeſſion* which a man may at his *own choice* fix upon, as his *particular vocation*; or rather as an *Office* of *duty* and *ſervice*, which he is to *undergo*, when by the *command*

mand of his *Prince*, he ſhall be thereto *appointed*, and ſo to come rather under the notion of a *General Calling*? To me it ſeemeth clearly to be of the *latter ſort*. For (1.) in the paſſage of St. *Paul*, 2 *Tim.* 2. 4. *No man that warreth, entangleth himſelf in the affairs of this life, that he may pleaſe him that hath choſen him to be a Souldier*; the word is στρατολογήσαντι, applyed to him that *warreth* with the *note* of *Univerſality* (ἐξῆς στρατεύεται) *annexed*, ſeemeth to imply, as if he *ſuppoſed* that no man might go to *war*, unleſs he were *choſen* for that *ſervice* by ſome other perſon that might Command it. Nor do I ſee (2.) what good conſtruction can be otherwiſe made of that *ſpeech* of our *Saviour*, Mat. 26. 57. *All they that take the Sword, ſhall periſh with the Sword*; or what ſhould be the *crime* there intended to be ſignified, by this Phraſe of *taking the Sword*, if it be not *thus*, for a man to *take* the *Sword* into his *hand* by his *own authority*, before it be *put* into his *hand* by that *Supreme Power*, whom God hath immediately *truſted* with the *bearing* and *managing* of it. Now (3.) can that be ſaid to be a *Mans Profeſſion*, or *particular Calling*, which Men of all Profeſſions are (in *obedi-*

ence to their *Governors*, and for the *ſervice* of their *Country*) *bound* to *perform* whenſoever they ſhall be by *Lawful Authority*, *called* and *appointed* thereunto.

5. If theſe *premiſes* will be *granted*, it will ſoon appear, that the *anſwer* to the *Queſtion propoſed*, in the beginning of the former Letter (as it ſtandeth there in *Terminis*, and in *Theſi*, abſtractly from the *conſideration* of the *perſon* in the ſaid Letter *charactered*, and thoſe other *circumſtances* which may *vary* the *Caſe*) muſt be in the *Negative*; viz. *That it is not lawful to be a Souldier, upon the ſame account that men apply themſelves to Trades, to the practice of the Laws, and to other (like) civil Imployments.*

II. *Conſideration of the Souldiers Imployment in particular.*

1. THe *care* that ought to be in every Man that *taketh* upon him the *exerciſe* of any *Office*, to be well aſſured that he hath a *ſufficient right* and *warrant* for ſo doing, is no leſs requiſite in a *Souldier*, than in any other *Officer*; yea rather by

by ſo much more requiſite in *him*, than in moſt of *them*, by how much the *matter* he is converſant about, *(viz. the Life of Man)* is of *greater conſequence*, than are the *matters* in which moſt of them are imployed; for the *Souldier* every time he *draweth* his *Sword* in the *Field*, is by the very *nature* of his *Imployment* ſuppoſed to do it either with a *reſolution* to *loſe* his *own*, or to *take away* his *Enemies life*; elſe he doth but *prevaricate*, and is *unfaithful* in the *Service* he has undertaken: In which *ſervice* if it be his fortune either to *kill*, or to be *killed*, he is actually and deeply *guilty*; but if neither, yet that very *reſolution* maketh him *intentionally guilty* of the Tranſgreſſion of the ſixth Commandment, *Thou ſhalt not kill*; in caſe he have no *good right*, ſo far to diſpoſe either of his *own*, or the *others life*. It concerneth him therefore to look well to that; both what *power* belongeth to him, as a *Souldier*, and by what *Authority* he claimeth the *exerciſe* of ſuch a *power*.

2. Moſt certain it is, that properly and originally the *power* to *diſpoſe* of Mans Life (*Jus vitæ & necis*) belongeth to *God alone*, who is, *Dominus vitæ & necis*, as the *ſole author* of *Life*, ſo the *ſole Lord* and *Maſter* of

of *Life* and *Death*: some part of which *power*, since it hath pleased him for the good of *humane Society*, (in the preservation of *Peace* and *Justice*, and the *punishment* of such as are *enemies* to either) to communicate unto *men* (which *power* so communicated, is that which we use to call *Jus Gladii*, or the *power of the Sword*) it may therefore be *lawfully exercised* by men; but within that *latitude*, and in *order*, as God hath communicated it to them, but not farther nor otherwise.

3. Now God hath not given to any man, either *Sovereign* or *Subject*, power over his own *life*, to *destroy* it by his *own voluntary act* in any Case; no nor yet *power* to *expose* it to the certain hazzard of being *destroyed* by another in *fight*, saving in the one only case of *just* and *necessary defence*: under which *notion* is to be comprehended also the hazzarding of the *Princes life*, in a *just* and *necessary War*; out of which Case, whosoever shall *expose* his *life* to hazzard by *fight* of his *own accord*; if he *perish* in it, cannot be *excused* from being guilty of his *own death*, nor from *usurping* a *power* over his own *life*, which God hath not allowed.

4. Adde

4. Adde hereunto the *injuſtice*, that he thereby doth to his *Sovereign* and *Countrey*. God hath given to his *Vicegerents* here on Earth, a *right in*, and a *power over*, the *perſons* of all their *Subjects*, within their ſeveral reſpective Dominions, even to the *ſpending* of their *lives* in their *Countries ſervice*, whenſoever they ſhall be by their *Authority* required thereunto, which they cannot therefore *prodigally ſpend* at their *own pleaſure*, without *apparent wrong* done their *Governors* intereſt; for as he that ſhall *kill* a *private perſon* is not only an *offender* againſt *God*, and againſt that *perſon*, in depriving him of *life*; but is alſo by the Interpretation of the Laws, (according to the importance of the ancient form of Enditing) an *offender* againſt the *Crown* and *Dignity* of his *Sovereign*, in depriving him of a *Subject*, and conſequently of the *intereſt* he had in his *perſon*, and of the *uſe* he might have had of his *ſervice*: ſo he that is ſo *prodigal* of his *own life*, as to hazzard it upon the *Sword* in *fight*, without his *Sovereigns Authority*, if he *periſh*, is not only *guilty* of his being *acceſſary* to his *own deſtruction*; but doth alſo an act injurious and prejudicial to his *Sovereign*, at whoſe *ſervice*

vice and *diſpoſal* (under God) his *life* and *perſon* ought to be.

5. And as his *preſumption* cannot be *excuſed*, if he be *ſlain* upon that account; ſo neither can he *juſtifie* the *killing* of another (though an *enemy*) in *Battle*, if he have no other *warrant* for taking of *Armes*, than from *himſelf*; for *War* is a kinde of *judicature*, wherein the *Prince* that *wageth* the *War*, is as the *Judge* that *giveth ſentence* of *death* againſt the *Enemy*, as a *diſturber* of the *Peace* of his *Countrey*, and all that *engage* in the *War* under him, are but as ſo many *executioners* of the *ſentence* pronounced by him; and he that *executeth* the *ſentence* of *death* upon another, muſt do it by ſome *lawful Authority*, as well as he that *pronounceth* the *ſentence*; or elſe he is a *Murtherer*, as well as *This*. Now the *Souldier* that by *fighting* on the *one ſide*, doth *ipſo facto* declare againſt thoſe of the *other ſide*, as Enemies; if he ſo *engage* of his *own minde* only, he doth indeed, upon the point, take upon him the *Office* of a *Judge*, being none, and ſo *runneth* before he be *ſent*: or if it ſhall be ſaid in his behalf, That he doth it not as a *Judge*, but as the *Executioner* of the *ſentence* pronounced by that

that *Prince*; into whoſe *ſervice* he hath put himſelf, and who by the *accepting* of his *ſervice* hath ſufficiently *authorized* him to do ſuch *execution*: Your Letter hath ſuggeſted to me this ready Anſwer, *That the ſentence pronounced by one that is not his Lawful Sovereign, and by conſequence, whoſe judgement he is not warranted to follow, is of no more validity* (as in relation to him) *than* Sententia lata à non judice, *and therefore can be no warrant to him to execute it.* True it is, that with *licence* from his *Sovereign*, he may *ſerve* under another *Prince*, and conſequently do ſuch *execution*, as we now ſpeak of; becauſe the *Sovereign* by ſo *licenſing* him, doth really refer him over from *himſelf* to *anothers judgement*, and conſequently *warrant* him to follow the ſame, and ſo render him *capable* (upon the others acceptance) to *execute* it. All this is true, but nothing to our purpoſe, becauſe it doth *deſtruere ſuppoſitum*; for we now ſuppoſe the Caſe of a *Souldier* putting himſelf into *ſervice*, under a *Forreigner* of his of his *own minde*, and where *himſelf thinketh good*, without the *knowledge* or *licence* of his own *lawful Sovereign*.

III. *Con-*

III. *Consideration of the end to be proposed by the Souldier.*

1. SIth the *goodness* or *badness* of Mens *actions* and *undertakings* dependeth very much upon the *end* which they propose to themselves therein; he that would desire to lead a *Souldiers life*, must narrowly examine his own heart, what it is, *bona fide*, and in very deed, that *first* and *chiefly* induced him to that desire, and what *affinity* there is between that *end*, which he proposeth to himself, as the *main scope* of his Intentions, and that which is or ought to be the *true end* of the thing it self; the *true end* of the *War*, which only can warrant it *lawful*, we all know is the necessary *preservation* of a *Commonwealth* in *Peace*, by repressing (or preventing) all *Seditions*, or *Hostile attempts* to the contrary; but as in other things it often happeneth, according to that saying [*Finis non idem est artis & artificis*] so here many times the *Warriour* hath another *end* to himself far distant from that of *War*, and the more *distant* ever the *worse*; as on the contrary, the *action* is ever by so much the *better*, by how much the

inten-

intention of the perſon hath a *near affinity with*, or a *directer tendency unto*, that for which the thing it ſelf was *ordained*.

2. Now the *ends*, which men deſirous to follow the *Wars* do uſually propoſe to themſelves in ſo doing, are eſpecially one of theſe Three, *Lucre*, *Honor*, or *to do their Countrey ſervice*; concerning which we are to enquire ſeverally, whether or no, and how far forth, any of theſe may be a *ſufficient inducement* to a *Chriſtian*, or but *moral man*, to follow the *Wars*, as his *particular Calling*, or *Profeſſion*.

3. For *Lucre* firſt: He that hath a *warrant* otherwiſe to imploy himſelf as a *Souldier*, may doubtleſs lawfully both *receive pay* and *require* it; *John the Baptiſt* allowed the *Souldiers* τὰ ὀψώνια, *Luke* 3. 14. And St. *Paul* thought it not reaſonable, that any man ſhould go to *warfare* at his *own charges*, 1 Cor. 9. 7. Nor ſo only, but he may alſo, in putting himſelf upon that *imployment*, (being called thereunto) have an *eye* to his *profit*, and an *actual intention* (if moderate and otherwiſe rightly qualified) of *getting* himſelf a *livelihood*, yea and of *raiſing* himſelf a *fortune* (as we call it) by his *ſervice* therein; even as men in the *choice* of other

other *Profeſſions*, or undertaking *Offices* uſually do and ſo may do without ſin? but to propoſe to himſelf *Lucre*, as the *main end* and *ſcope* of following the *Wars* (as it is evident by their actions, that very many of our Common Souldiers do) is one of the moſt *hateful* and *unrighteous* things in the World: ſo far is it from being a *ſufficient inducement* to any man to make that his *Profeſſion*. How can it be imagined to be conſiſtent with that *Charity*, *Juſtice*, and *Moderation*, that ſhould be in every *Chriſtian* to ſet up a *Trade* of *killing of Men* for Money? The meer *Mercenary Souldier* therefore, or a *Souldier* of *Fortune* (as we call him) I finde every where inveigh'd againſt; as one of the greateſt *Scourges*, or *Plagues* of Mankinde; for ſuch Men never look at the *Cauſe* they engage for, whether it be *right* or *wrong*; but at the *pay* and *prey*; and therefore they take their beſt Markets, and care not whom they *undo*, *kill*, and *oppreſs*, by *Violence*, *Rapine*, *Murther*, and *Plunder*, ſo they may but *enrich* themſelves thereby, and can do it with ſafety: Nor will they ſtick, if there be an advantage to be made of it; and that they can ſpy a fit opportunity for it, either

either to *betray* their own *party*, or to *revolt* to the *other ſide*, or to do any other act, though never ſo baſe and diſhoneſt, *Nulla fides pietaſque viris qui caſtra ſequuntur.*

4. Next the *intuition* of *Honor* and *Glory* to be acquired by *worthy Actions* in the *Wars*, may be not only *lawful*, but *commendable* alſo and *uſeful* in a *Souldier*; and truly this of *Glory* is a more *noble end*, of a higher pitch, and more befitting a Generous ſpirit by much, than that of *Lucre* is: both becauſe Men of *eminent Birth*, and *Place*, and *Parts*, are apteſt to be affected with it; whereas *Gain* worketh moſt upon the *lower ſort* of Men, and alſo becauſe it putteth Men upon more worthy *Enterprizes*, and ſuch as may win *Honor* and *Reputation*; and *reſtraineth them* from thoſe *baſer acts* of *Injuſtice*, *Cruelty*, and *Rapine*, to which the *deſire* of *Gain* uſually prompteth the *mercenary* Man; but yet as to the warranting of the *Souldier* for making that his *Profeſſion*, (which is the Point now in hand) this of *Glory* is of no more *importance*, than was that of *Gain*; for the *right end* of *War*, being a *ſafe* and *honourable Peace*,

there is ſomething common to both (conſequential to the *deſire* of *Glory*, as well as of *Gain*) ſo *inconſiſtent* with that *end*, that it ſetteth them at an *equal*, or not much *unequal diſtance* therefrom: For as he that aimeth to *gain* by the Wars, cannot but deſire the *continuance* of War, that ſo his *hopes* of *gain* may continue; ſo he that aimeth to get himſelf *Glory* by the Wars, cannot but deſire the *continuance* of War, that ſo the opportunities of *encreaſing* his *Glory* may continue; for there is a *Dropſie* of *vain-glory* in the *Ambitious*, as well as of *Avarice* in the *Covetous*, as *thirſty* and *unſatiable* in the *one*, as in the *other*; whence it cometh to paſs, that both the *one* and the *other uſe* their *utmoſt wits* and *endeavours* to finde occaſions to *lengthen* the Wars, and to *obſtruct* and *retard* (ſo much as lieth in them) the *advices* of *Peace*: Nay, let me adde moreover, that in this reſpect at leaſt (*viz.* as to the effectual hindring of Peace) that of *Honour* and *Glory*, is much the more *dangerous end* of the two; becauſe this *humour* is apteſt to *ſeize* upon the *greateſt perſons*, and ſuch as by *priviledge* of their *birth*, *eminency* of their *places*, *activeneſs* of

of their *ſpirits*, *glory* of their *former actions*, or other like advantages bear a great *ſway* in *Councils*, and are of ſome *authority* in the *Armies*: whereas the *Peaſantry*, in whom moſt of the other *humour* (that of baſe *Lucre*) aboundeth, have neither the *wit* nor the *power* ordinarily to do much harm. It hath therefore been a conſtant obſervation in all times and places, that the *embroyling* moſt *Common-wealths* in Wars, in the mean time, and working their *ruine* in the end, hath grown from the *reſtleſneſs* of ſome *ambitious ſpirits*, and their immoderate *thirſt* after *Honor* and *Glory*:

——*Patriam tamen obruit olim*
Gloria paucorum, & laudis titulique cupido:

Juvenal Sat. 10.

5. So that if there be any poſſibility of finding a perſon *capable* to take upon him the *imployment* of a *Souldier*, as his proper *Profeſſion*, it muſt be among thoſe that propoſe to themſelves the *ſame end* therein, that is, or ought to be the *end of War*; that is to ſay, thoſe that after an impartial

ſearch of their own hearts, can truly ſay (and not pretend it only) *That their chiefeſt aim in applying themſelves to the Wars, is to do their King and Countrey ſervice, in procuring or preſerving the Peace thereof*: which no man can truly ſay, but he that preferreth the *publick Good*, and the *Peace* of his *Countrey*, before all *private intereſts*. The tryal whereof is, if he take up Armes with this *Reſolution*, and by his after carriage make it *good*, not to do any *act*, or enterpriſe any thing for his *own benefit, glory*, or *ſafety* that may hinder, nor to refuſe any *ſervice* or *hazzard* that may probably promote, the *obtaining* of that *end*; which Qualification ſuppoſed, I deny not but that a Man may finde *warrant* to go on in the way of a *Souldier* as his proper *Profeſſion*, and that in two Caſes.

6. Firſt, that which (in the nature of the *Imployment* it ſelf) is rather an *Office* than a *Profeſſion* (ſuch as we have already ſhown the *Souldiers* imployment to be may yet become to the perſon ſo imployed, as his proper *Profeſſion*, if he ſhall be *appointed* thereunto by *lawful Authority*; eſpecially if it be done with a *declared intention* (whether

(whether expreſly or interpretatively declared) of continuing him for *life*, or for any *long ſpace* in the ſame; and that the ſaid *imployment* during ſuch his *continuance* therein, ſhall require his *perſonal attendance*, either conſtantly or for the moſt part: As for example, a *Lawyer* by Profeſſion and Practice, is by his *Sovereign* called to be a *Judge* of either Bench, or a *Baron* of the *Exchequer*, the *Office* of a *Judge* is now become his *Profeſſion*, or *particular Vocation*, becauſe it is ſuppoſed that he is to continue in that *Office*; and the *execution* of that *Office* will require his *attendance* thereupon, in the yearly *Terms* and *Circuits*: but if the *King* ſhall appoint a *Serjeant* or *Counſellor* at the Law, by his particular *Commiſſion* to ride this *Summers Circuit*, into ſuch and ſuch Countries, and there to *execute* the *Office* of a *Judge*, the Party ſo *conſtituted* and *appointed* hath by virtue of that *Commiſſion*, full power to do the *Office* of *Judge* in that *Circuit*, and is to be received and honoured with the title of *Lord*, and all other teſtimonies of *honour* and *reſpect*, in as much ample manner as other *Judges* in their *Circuits* are; yet doth he

not thereby come to be *denominated* a *Judg*, as if that were his proper *Profeſſion*, or ordinary *Calling*, as in the former Caſe; becauſe he is *impowered to execute* the *Office* of a *Judge*, but during the time of that *Circuit* only: Nor is his *attendance* upon that *Office* any longer required, or ſo much as allowed him. In like manner, if the *King* of *England* ſhall make choice of ſome perſon of Quality to be *Governour* of *Dover Caſtle*, or of *Barwick*, that *Office* then is as his *Profeſſion* or particular *Calling*; becauſe it is to be ſuppoſed, he is to continue in that *imployment*, and to *attend* the ſame, until the *Kings pleaſure* be further known therein: but if the *King* upon ſome ſuddain *Inſurrection* and *Invaſion* ſhould raiſe an Army, and make choice of ſome perſon of like Quality to have the *Conduct* thereof, for the *Suppreſſing* or *Repelling* ſuch *Inſurrection* or *Invaſion*, his *Imployment* in that ſervice being but *temporary* and to *determine*, as ſoon as the buſineſs were ended, ſhould not otherwiſe than in *curteſie*, denominate him a *General*; or at leaſt not be *eſteemed* as his permanent *profeſſion*, but only as a *tranſient Office*: This is one Caſe.

7. The

7. The other Caſe (which is more pertinent to the buſineſs of theſe Letters) is of ſuch as deſire to *imploy themſelves* in the exerciſe of Armes in *Foreign Service*, that they may attain to ſuch knowledge or experience in the *Art Military*, as might the better enable them to do their *King* and *Countrey Service*, whenſoever there ſhould be need thereof; for ſince the *Manegery* of War, is long ſince grown into an *Art*, and that not to be learned from *Books*, or from *private ſtudy*; but to be acquired by much *practice*, and *experience*, and *diligent obſervation*: and the rather for that the particular *Rules* of that *Art*, do not ſtand at ſuch a certain *ſtay*, as thoſe of moſt other *Arts* do, but are daily *altered* and *improved* by *new Inventions*: It is very neceſſary for every *State* to be well provided of a good number of ſuch perſons of their *own Nation*, as ſhould be *expert* and *skilful* in that *Art*; leſt they ſhould be *forced*, if an *unexpected War* ſhould happen, to call in *Foreigners* for *aſſiſtance*, which is both *diſhonourable* and *dangerous*: the neceſſity hereof too well appeareth by the *evil conſequents* of the *neglect* of it in *this Nation* in

theſe *latter times*, eſpecially in the *Reigns* of the *two laſt Kings*, by reaſon of the *long Peace*; and (which commonly breedeth out of it, as the *ruſt* and *canker* thereof) *tenderneſs* of *Education* and *voluptuous living*. The *Nobility* and *Gentry* of *England*, in the generality of them, had ſo much *degenerated* from the *Martial Proweſs* of their *Anceſtors* renowned in all *Hiſtories*, that in the beginning of theſe *unnatural Wars*, there were very few to be found of our own *Nobility* and *Gentry*, fit to have *command* in an *Army*, or that knew any thing belonging to the *Art* of *War*; inſomuch as *uſe* was made on both ſides of *Mercenary Men*, and moſt of them *Scots*, who being for the moſt part bred up abroad (in *France* eſpecially, a place of much action) had learned *experience* more than our *Engliſh* had in ſuch matters, by which *advantage* they had ſo wound themſelves into the *chief places* of *Command*, and had ſuch an *influence* into the *Councils* of both ſides, that the *War* was in a manner *wholly ordered* by their *directions*, witneſs the great power that *Ruthen*, *Urrey*, *King*, *Meldram*, &c. had in the Armies on either ſide.

8. The

8. The *weightineſs* then of *Princes Affairs*, upon all *emergent occaſions*, rendring it *neceſſary* for them, not only to have *power* to *command* their *Subjects* of whatſoever Rank or Profeſſion to ſerve as *Souldiers* in their Wars; but alſo to provide aforehand for a *ſupply* of *able Men*, both for *places* of *Command*, and to execute other parts of that *ſervice*, which cannot be done, unleſs a conſiderable number of perſons be *trained up* in the *exerciſe* of *Armes*, and *bred Souldiers*: It is conſequently *neceſſary*, that ſome perſons be, either by their Authority *appointed*, or at leaſt by their permiſſion *allowed* to addict themſelves to a *Military courſe of Life*, as their proper *Profeſſion* and *Calling*, which *Authority* or *Permiſſion* from their *Sovereign*, will ſufficiently warrant to their *conſcience* the *choice* of that *Profeſſion*; ſuppoſing (as now we do) that the *intention* be *right*, the perſon *meetly qualified*, and all other *Cautions* in reſpect of the *matter*, *manner*, *circumſtances*, and otherwiſe, duly obſerved.

9. The *neceſſity* of *learning* this *Art* granted, there may ſometimes follow a further neceſſity, *viz.* of *learning* it *abroad*, and

and after it is learned, of *exerciſing* it *abroad*; and in *Foreign ſervice*, and that in theſe *two Caſes*: Firſt, when the Souldiers *own Countrey*, whereunto his *ſervice* is principally, and in the firſt place *due*, hath either the *happineſs* to be in a *ſettled Peace*, and *Freedom*, under the *Government* of a *lawful Sovereign*; or the *unhappineſs* to be in ſuch *ſervitude*, through the prevalency of an *Uſurping Power*, that no *Reſiſtance* can be made there againſt; for in the former Caſe, there is no *exerciſe* at all of the *Souldiers faculty* in earneſt; and of what little avail to the attaining of any *ſolid knowledge*, or *experience* in the *Art Military*, ſuch ſuperficial *trainings*, as were uſed (and thoſe but very ſeldom neither) by the *Lieutenants* of the ſeveral *Counties* here in *England*, with the *Countrey Captains* and *Muſter-Maſters* are (beſides that our own reaſon will tell us) the *Rawneſs* and *Unſerviceableneſs* of our *Trained-Bands* in the beginning of the *late Wars* did abundantly *manifeſt*: and in the latter Caſe, the *Souldier* if he will have *Imployment* at home, muſt either *engage* on the behalf of an *unjuſt Power*, or elſe run upon his own certain *deſtruction* to no purpoſe.

IV. *Con-*

IV. *Conſideration of the condition of the Perſon.*

1. THis muſt be conſidered too; for the different *conditions* of *perſons*, may make a great difference in the *lawfulneſs* or *unlawfulneſs* of their *actions*, according to the *old ſaying*, which holdeth true in *this ſence* alſo, no leſs than in *that other*, in which it is commonly uſed (relating to Mens corrupt partialities) *Duo cum faciunt idem, non eſt idem.* In your Friends ſecond Letter, I finde a *demand* made (as in the way of *Reply* to ſome paſſage of your *Anſwer* to his firſt Letter) to this purpoſe; Suppoſe *two great Princes* (as *France* and *Spain*, for inſtance) have had *long Wars* together, and the *juſtice* of the *Cauſe* appear neither more nor leſs, on the *one ſide*, than the *other*, if in caſe a *third Prince*, or *State*, out of a ſincere deſire to *Eſtabliſh* the *Peace* of *Chriſtendom*, after other *offers* and *mediations* for that purpoſe made in vain, might lawfully *joyn* in *Armes* with the *one party* to force the *other* to *Peace*, why a *private perſon* might not as lawfully (having

ving the ſame intention) enter into *Armes* for the ſame purpoſe; and the reaſon of *demand* thereof is, becauſe every *Prince* or *State* is (in relation to other Princes and States) but as one *private man* to *another*; for being called to the *Regiment* of his *own people* only, he is but as a *private man* in *Aliena Republica*.

2. But that there is a great *difference* between a *Sovereign Prince* and a *private perſon* in this *affair*, it cannot be denied; inſomuch that I finde in the very ſame *paſſage* (put in as it were by way of *Objection*) *three* very conſiderable *differences*. Firſt, That *Princes* may, and ſometimes are obliged by *Articles* and *Covenants* for the *defence* of their *Allies* to take up *Armes*, which cannot be the *caſe* of *private Men*. Secondly, That *Princes* may ſee cauſe to ſet in for their *own ſafety* and *intereſt*, leſt the *prevailing Party* might grow *too Potent*, and ſo themſelves might be *oppreſſed* by him. Thirdly, there is a greater probability in a *Prince* of compaſſing that Noble and Glorious end, *The Peace of Chriſtendom*, than can be in a *private Man*. All theſe *differences*

rences are allowed there as true; but yet *excepted* againſt, as not contributing any thing to the *juſtice* of the *cauſe* which is here the Queſtion.

3. If theſe do not, yet a *Fourth difference* there is, that will (as I conceive) manifeſtly contribute thereunto, to wit, that *Jus Belli*, is *Penes Principem ſolum:* in the buſineſs of War, *Princes* have a *judicial*, *private Men* an *executive power* only; and he that hath no *power* but to *execute* the *ſentence* of a *Judge*, is bound to wait the *Judges Sentence* before he offer to *act*; otherwiſe he ſhall *act* beyond his *lawful power*, which is *unjuſt*: Not but that a *Prince* if he raiſe a War where he ought not, is *unjuſt* too; even as a *Judge* is *unjuſt*, which pronounceth a *wrong ſentence*: but herein is the difference between them for taking up of Armes. The *Prince* having *jus agendi* in that behalf, may do it *juſtly*, and he may do it *unjuſtly*; yet where he doth it *unjuſtly*, he doth but *abuti jure ſuo:* but the *private perſon*, not having *jus agendi*, in that reſpect cannot (without the *Authority* of the *Sovereign*) do it otherwiſe than *unjuſtly*

juſtly; becauſe in ſo doing, he doth without leave *uti jure alieno*, which is alwayes *unjuſt*. It is one thing for a Man to *uſe* (whether well or ill) a *power* that of right belongeth *to him*, and another to *aſſume* a *power* that of right belongeth *not to him*; the *one* is not *unjuſt*, unleſs he *abuſe* his Power, the *other is* if he *uſe* it at all.

4. Neither perhaps will the Reaſon alledged to the contrary (*viz.* that a *Prince* in point of *Juſtice* and *Power*, is in *Aliena republica*, but as a *private perſon*) bear ſo much weight as is laid upon it, if one Point be well conſidered, which I think will prove a *truth*, though it be very tenderly handled; otherwiſe it may prove very *dangerous*, both becauſe it may ſeem a *Paradox* to thoſe that have been little converſant in *publick Affairs*; as alſo, and eſpecially, becauſe it may, by racking it too high, be eaſily *wreſted* to a *miſchievous conſtruction*, for the Patronage of any *Tyrannical action*; the point is this, that *juſtitia politica*, and *Juſtitia privata*, have not in all the ſame adequate meaſure. *Princes* are bound to be *juſt*, as well at the *meaneſt private men* are,

are, and obliged to keep *faith* both with *Friends* and *Enemies*, every whit as *exactly* and *punctually*, without *equivocation*, *reſervation* or other *eluding devices*, as they; of all this no man doubteth: but it is not therefore neceſſary, that the *Rules* of *Juſtice*, whereby the *Councils* and *Actions* of *Princes* and *States*, in their mutual Relations are to be meaſured, ſhould be preciſely *the ſame* with thoſe which meaſure the *dealings* of Private men one with another.

5. And the reaſon of the difference is evident: private Mens *Controverſies* may be *decided*, and their *Injuries repreſſed* or *puniſhed*, by the *poſitive Laws* of the *State*, whereof they are Members; and conſequently *ſubject* to be ordered in all their *dealings* by thoſe *Laws*; which *poſitive Laws* (together with the *Law* of *Nature*, and the *Divine Law*, which are common to all Men) are the *adequate Rule*, whereby the *Juſtice* of *private Perſons*, and of their *actions*, is to be meaſured; but ſince *Princes* and *States* are not ſubject to any ſuch *poſitive Laws* common to them both, as may

may determine their *Differences* and *Controverſies*; The great neceſſity of *Humane Affairs*, hath (for the good of Mankinde in the preſervation of Peace) introduced by the *common conſent* of *Nations*, another *Law* of larger extent, that which we peculiarly call *Jus Gentium*, or the *Law of Nations* (whereof that which we alſo call the *Law of Armes*, is one ſpecial part) by which the *Law of Nations* (together with the *Law of Nature*, and the *Divine Law*, as aforeſaid) the *Juſtice* of *Princes* and *States*, and of their *Actions*, is as by the proper and adequate *Rule* thereof to be *meaſured*. Whence it cometh to paſs, that ſundry things are by the *Rules* of *Politique Juſtice* allowed as *lawful* and *juſt* between *Princes*, which between *private men*, would by the *rules* of meer *moral Juſtice*, be condemned (and that deſervedly too) as *unjuſt* and *unlawful*: There are ſundry *Arcana Imperii*, ſome arts and ſimulations for maintaining *Intelligence abroad*, for concealing and diſguiſing *Councils at home*, in the Inſtructions of *Embaſſadors* and managing of *Embaſſies*, in making *Alliances* and *Confederacies*, but eſpecially in the purſuance and effects of War,

War, which ſeem much to ſwerve from the ordinary Precepts of *moral Juſtice*; which yet (*ſide integrâ & citrâ dolum malum*) are by the conſent of *Nations* allowed to be uſed, and ſo muſt be, or elſe there could be no *ſecure living* in the world in any *Society*: that ſaying of his *Atque ipſa utilitas juſti prope mater & æqui*, had ſomewhat of truth and reaſon in it.

6. The *truth* and *reaſonableneſs* of what hath been ſaid will appear (omitting many other) in theſe few Inſtances. *Firſt*, When a *Town* is taken by the *Enemy*, by the *Law of Nations*, the *ſpoil* thereof falleth to the *Conqueror*, which if he give to the *Souldiery* to plunder (as uſually is done) every *Souldier* thereby acquireth a *juſt Right* and *Dominion* in that which he can lay his hand on firſt, and take into his Poſſeſſion. *Secondly*, It may ſometimes concern a *Prince* or *State* in point of *Honour* or *Safety* to *vindicate* himſelf by *War*, for ſome *wrong* offered to his *Merchants*, or for ſome *Rudeneſs* or *Incivilities* done to his *Embaſſador* (for even theſe, in caſe *Reparation* be *demanded*, and *denyed*, have been ever held

juſt cauſes of *War*; (as *Amphitruo* in *Plautus* rendereth that as a ſufficient reaſon of his War, *Nimis ferociter legatos noſtros increpant*) in this caſe it is by the *Law of Nations* allowed him, not only to *fight* againſt the *Prince* himſelf, who yet only did the *wrong*, but to *waſte* his *Countrey*, *fire* his *Towns* and *Villages*, and *ſpoil* thouſands of his *innocent Subjects* of their *fortunes* and *lives* in purſuance of his *juſt revenge*; but if a *private Gentleman* wronged by his *Neighbour* ſhould in like manner, in *revenge* of that *wrong*, *beat* his *Servants*, *vex* his *Tenants*, and ſeek his or their *undoing*, the *act* were palpably moſt *unchriſtian* and *unjuſt*. *Thirdly*, Since *potent Princes*, have for the moſt part, great *Ambitions* (and *Ambition* is a boundleſs *luſt*) it behoveth a *Prince* for his *own ſafety*, to have a watchful eye over the *Motions* and *Deſigns* of a *potent Neighbor*, almoſt as much as of a *declared Enemy*; and therefore *wiſe Princes* have been ever careful by all *juſt means* to ballance their *neighbour Princes* and *States*, as near as they could; in ſuch a proportion as might *hinder* the too much *over-growth* of any one above the reſt: In order

order whereunto it hath been held *lawful* for a *Prince*, laying aſide the conſideration of the *cauſe*, to *joyn* in *Armes* with the *weaker*, for his *aſſiſtance* againſt his *Potent Adverſary*, who elſe were likely in a ſhort time to *ſwallow* him up, whereby he ſhould become *formidable* and *dangerous*, as well to *himſelf*, as to the *other* his *neighbour Princes* and *States*; upon which account alone, were there no other reaſon beſides, it would be as *juſt* for all *Chriſtian Princes* to compoſe their *own quarrels*, and to *aid* the *Venetian*, and *Hungarian*, *Perſian*, or *Tartar*, againſt the *Turk*, as it is *expedient* and *honourable* for them ſo to do: but what is thus allowed *juſt* in the *waging* of *War* between *Princes*; if in a *wager* of *Law* a *private perſon*, ſhould attempt the like, *viz.* to *aſſiſt* with his *purſe* and *pains*, a *Poor Man* againſt a *Rich*, without conſidering the *equity* of the *cauſe*; the *act* were (as in the former inſtance) palpably *unjuſt* and *unchriſtian*: Inſtances might be produced many more to the ſame effect, were it needful: but theſe I think ſufficiently evidence the *truth* of what I undertook to ſhew in this particular.

7. There are alſo ſundry other *circumſtances* conſiderable concerning the *condition* of the *perſon*, which may render the ſame *undertaking unlawful* to *one*, which yet may be *lawful* for *another*, or more or leſs *expedient* or *inexpedient* for *one* than for *another*, ſuppoſing both *private perſons* and *Subjects*; as namely, whether he be a *perſon* of *Honor* and *Eſtate*, or a *man* of *ordinary rank* and *fortune*; whether a *ſingle man* or *Married?* if *Married*, whether he have the *conſent* of his *Wife* or no? and whether ſuch *conſent* were a *free* and *rational conſent* in the *Wife*, ariſing from a Judgement *convinced* of the *fitneſs* of the *undertaking*, or rather *wrung* from her by the *importunity* of the *Husband*, and her *facility* in *yielding* to the *potency* of his *deſires* therein? whether the *neceſſity* of his *domeſtical Affairs*, and *Oeconomical Relations* will brook his *abſence*, for ſo long a time, as muſt be ſpent in that *Imployment*; or will not rather require his *preſence* and *care*, for the *menagery* thereof in the mean time? and an hundred other like *doubts* and *difficulties* meet to be taken into *deliberation*, and *unprejudicately* weighed, againſt thoſe other

other *probabilites* and *inducements*, which at firſt *kindled* and after *fomented* his *deſires*, before he *imbarque* himſelf in that *Imploy-ment:* and yet when all is done, it were *ſafer* for him (in my opinion) to *forbear* then to *proceed* in his *intentions*, unleſs he ſhall be aſſured, that he hath the *free allow-ance* of his *Sovereign*, thereunto either *ex-preſſed* (which would be the cleareſt *war-rant* for his *conſcience*) or at leaſtwiſe upon very pregnant grounds of probability *pre-ſumed*.

The Case of SCANDAL.

1. IN judging of *Cases of Scandal*, we are not ſo much to look at the *event*; what that is, or may be; as at the *cauſe* whence it cometh; for ſometimes there is given *juſt cauſe* of *Scandal*, and yet no *Scandal* followeth, becauſe it is not *taken*: ſometimes *Scandal* is *taken*, and yet no *juſt cauſe giuen*; and ſometimes there is both *cauſe* of *Scandal given*, and *Scandal* thereat *taken*: but no man is concerned in any *Scandal*, that happeneth to another, by occaſion of any thing *done* by him; neither is *chargeable* with it, farther than he is *guilty* of having *given it*: If then we *give Scandal* to others, and they *take* it not, we are to bear a ſhare in the *blame* as well as *they*, and that a *deeper ſhare* too, (*Væ homini, Woe to the Man by whom the offence cometh*, Matth. VIII. 7.) but if they *take Offence*,

fence, when we *give* none, it is a thing we cannot *help*, therefore the whole *blame* muſt lie upon them; wherefore if at any time any *doubt* ſhall ariſe in the *Caſe of Scandal*, how far forth the *danger* thereof *may*, or *may not oblige us* to the *doing* or *not doing* any thing *propoſed*, the *Reſolution* will come on much the *eaſier*; if we ſhall but rightly underſtand, What it is to *give Scandal*, or how many wayes a Man may become *guilty* of *Scandalizing another* by his *example*. The wayes (as I conceive) are but theſe *four*.

2. The *firſt* is when a Man doth ſomething before another Man, which is in it ſelf *evil*, *unlawful*, and *ſinful*; in which *Caſe*, neither the intention of him that *doth it*, nor the *event*, as to him that *ſeeth* it *done*, is of any *conſideration*; for it mattereth not, whether the *doer* had an *intention* to *draw* the *other* into *ſin* thereby or not: neither doth it matter, whether the *other* were thereby *induced* to *commit ſin* or not: the *matter* or *ſubſtance* of the *action* being *evil* and *done* before *others*, is ſufficient to render the *doer guilty* of having *given Scan-*

dal, though he had neither any *intention* himself so to do; nor were any person *actually Scandalized* thereby; because whatsoever is in it self, and in its own nature *evil*, is also of it self and in its own nature *Scandalous*, and of *evil example*. Thus did *Hophni* and *Phineas* the Sons of *Eli*, give *Scandal* by their *wretched prophaneness* and *greediness* about the *Sacrifices* of the *Lord*, and their *vile* and *shameless* abusing the *Women*, 1 *Sam.* II. 17. 22. And so did *David* also give great *Scandal* in the *matter* of *Uriah*, 2 *Sam.* xii. 14. Here the *Rule* is, *Do nothing that is evil, for fear of giving Scandal.*

3. The *second* way is, when a Man doth something before another, with a *direct intention* and *formal purpose* of *drawing* him thereby to *commit sin*; in which *Case*, neither the *matter* of the *action*, nor the *event* is of any *consideration*, for it maketh no *difference* (as to the sin of *giving Scandal*) whether any man be *effectually enticed* thereby to *commit sin*, or not; neither doth it make any *difference*, whether the thing *done* were in it self *unlawful* or not,

so

ſo as it had but an *appearance* of *evil*; and from thence an *aptitude* to *draw* another to do that (by *imitation*) which ſhould be *really* and *intrinſically evil*, the *wicked intention* alone (whatſoever the *effect* ſhould be, or *means* ſoever ſhould be *uſed* to *promote* it) ſufficeth to induce the *guilt* of *giving Scandal* upon the *doer*: This was *Jeroboam*'s ſin, in ſetting up the *Calves* with a *formal purpoſe* and *intention* thereby (for his own *ſecular* and *ambitious* ends) to *corrupt* the *purity* of *Religion*, and to draw the *people* to an *Idolatrous Worſhip*, for which cauſe he is ſo often *ſtigmatized* with it; as with a note of *Infamy*, to ſtick by him whilſt the *world laſteth*, being ſcarce ever mentioned but with this addition, *Jeroboam the ſon of Nebat that made Iſrael to ſin*. Here the *Rule* is, *Do nothing (good or evil) with an intention to give Scandal.*

4. The *third way* is, when a Man doth ſomething before another, which in it ſelf is not *evil*, but *indifferent*, and ſo according to the *Rule* of *Chriſtian Liberty*, *lawful* for him to *do*, or not to *do*, as he ſhall ſee *cauſe* (yea, and perhaps otherwiſe *commodious*

dious and *convenient* for him to *do*) yet whereat he probably *foreseeth* the other will *take Scandal*, and be occasioned thereby to do *evil*. In such Case if the thing to be done, be not in some degree (at least prudentially) *necessary* for him to *do*; but that he might, without *great inconvenience* and *prejudice* to *himself*, and any *third person*, leave it *undone*, he is bound in *Charity* and *Compassion* to his *Brothers Soul*, (for whom Christ dyed) and for the avoiding of *Scandal* to *abridge* himself in the *exercise* of his *Christian Liberty* for that time so far, as rather to suffer some *inconvenience* himself by the not *doing* of it, than by *doing* of it to cause his *Brother* to *offend*; the very Case which is so often, and so largely, and so earnestly insisted upon by St. *Paul*, *Romans* xiv. 13,--21. and xv. 1, --3. 1 *Cor.* viii. 7,--13. and ix. 12, 22. and x. 23,--33. Here the *Rule* is, *Do nothing that may be reasonably forborn, whereat it is like Scandal will be taken.*

5. The *Last way* is, when a Man doth something before another, which is not only *lawful*, but (according to the exegencies

cies of preſent circumſtances *pro hic & nunc*) very *behoofeful*, and in ſome ſort (prudentially) *neceſſary* for him to do; but foreſeeth in the *beholder* a propenſion to make an *ill uſe* of it, and to take encouragement thereby to *commit ſin*; if there be not withal a great care had to *prevent*, as much as is poſſible, the *Scandal* that might be *taken* thereat: for, *Qui non prohibet peccare, cum poteſt jubet.* In ſuch caſe the bare *neglect* of his *Brother*, and not uſing his utmoſt endeavour to prevent the *evil* that might enſue, maketh him *guilty*; upon which Conſideration ſtandeth the *equity* of the *Judicial Law* given to the *Jews*, Exod. xxi. 33, 34. which ordereth that in caſe a Man dig a *Pit* or *Well* for the uſe of his *Family*, and (looking no farther than his own Conveniency) put no *cover* on it, but leave it *open* whereby it happeneth his Neighbours Beaſt to *fall* therein and *periſh*, the *owner* of the *Pit* is to make it *good*, in as much as he was the *occaſioner* of that *loſs* unto his neighbour, which he might and ought to have *prevented*: In this laſt Caſe the thing is not (for the danger of the *Scandal*) to be *left undone*, ſuppoſing

posing it (as we now do) otherwise *behoofeful* to be done; but the *action* is to be ordered, and carried on by us, for the manner of *doing*, and in all Respects and Circumstances thereunto belonging, with so much *clearness*, *tenderness*, and *moderation*, and *wisdom*, that so many as are willing to take notice of it, may be *satisfied* that there was on our part a reason of *just necessity* that the thing should be done; and that such persons as would be willing to make *use* of our *example*, without the like *necessity*, may do it upon their own *score*, and not be able to *vouch* our *practice* for their *excuse*; even as the *Few* that stood in need to *sink* a *pit* for the service of his House and Grounds, was not (for fear his Neighbours Beasts should fall into it and be Drowned) bound by the *Law*, to forbear the *making* of it, but only to provide a sufficient *Cover* for it, when he had made it. Here the *Rule* is, *order the doing of that, which may not well be left undone, in such sort, that no Scandal may, through your default, be taken thereat.*

6. I do not readily remember any *doubt* that

that can occur about the reaſon of *Scandal*, which may not be brought within the compaſs of theſe *four Rules*; and then the right applying ſome or other of theſe *Rules*, will give ſome furtherance towards the *reſolution* of theſe *doubts*.

The

The CASE
of
A BOND
Taken in the
KINGS Name:
Propoſed *July* 1658.

R. C. *Was* ſeized *in* Fee *of certain* Houſes *of ſmall Value*, *with the* Appurtenances; *and in the Year* 1635. *whiles* Owner *of the ſaid* Houſes, *he entreated* A. B. *to be his* Surety *for* One Hundred Pounds; *and continued the ſame at* Intereſt *till* 1639. *At which time he requeſted* A. B. *to* diſcharge *that* Bond, *and in* conſideration *thereof*, ſelleth *the ſaid* Houſes *to* A. B.

A. B. *and his* Heirs *for ever*; *the ſaid* R. C. *alſo* buyeth *of a* Merchant *a parcel of Goods*; the Merchant *being a* Receiver *of ſome part of the late* Kings Revenue, *and under pretence of a* priviledge *thereby, taketh a* Bond *of the ſaid* R. C. *for the* payment *of* Two Hundred pounds *to himſelf, but in the* Name *of the late* King, *as if* indebted *to the* King; *and under that* pretence, *procureth an* extent *upon the* Houſes *ſold to* A. B. *and maketh* ſeizure *thereof: Was* R. C. *ſeized of the ſame, when he* entred *into that* Bond?

The ſaid King, 1640. *publiſhed a* Proclamation, *wherein he declared, That the* taking *of ſuch* Bonds, *was* contrary *to* His Intention, *and an* abuſe *of his* Prerogative, *and* prohibited *all ſuch* crafty Courſes, *as tending to the* Oppreſſion *of his* Subjects; *and it is to be* noted, *that the ſaid* Proclamation *was publiſhed* two years *before the* extent *was executed upon the* Houſes, *which nevertheleſs have been held under that* extent, *about* fourteen years, *which is beyond the* value *of the* Houſes.

The

The said R. C. *died poor, the* Merchant *is dead also, without any* Childe; *leaving an* Estate *behinde him of* Twenty thousand Pounds, *as is supposed; a great part* visible *in* Lands, *as appeareth by his* last Will *upon* Record.

Advice of Council *at* Law *being taken, how the said* A. B. *may be most* readily relieved; *he is directed to* Petition *the* present Supreme Power *to* pardon *the* Debt, *because taken only in the* Kings Name, *when there is no* Debt *due to him from* R. C.

As

As to the Caſe Propoſed.

1. I Am clearly of opinion, that the taking of *Bonds* in the *Kings Name*, to the *meer behoof*, and for the *advantage* of *private perſons*, when there was no ſuch *Debt* really due to the *King*, was a *fraudulent* and *unjuſt act* from the beginning; for though it were not *actually forbidden*, and ſo might perhaps be *valid* enough in *foro externo*, till the iſſuing out of the Kings *Proclamation* in that behalf; yet was it in *point* of *Conſcience* unlawful before, as being a *crafty courſe*: ſo *refuſed* by the King himſelf, and *guilty* of a *double injuſtice*, the *one* to the *King*, as an *abuſe* to his *Prerogative*; the *other* to the *Subject*, as tending to their *oppreſſion*, as by the *Proclamation* is recited, and that therefore.

2. Neither might the *Merchant*, whiles he *lived*, nor ought his *Executors*, now he is *dead*, to make *advantage* of the *Kings Name* used in that *Bond*; nor might *he* then, nor may *they* now, by virtue of the Kings *Prerogative*, or under the *colour* thereof, for the *recovery* of the said *Debt*, use any way to the *prejudice* or *damage* of the *Obligee*, or of any *Purchaser* from him, other than such, as he or they might have used, in case the *Bond* had been taken in the *Obligee's* own Name, and not in the Kings.

3. If any *Proceedings* have been made already, in pursuit of the *Debt*, due upon the said *Bond*, upon no other ground or colour, than the *Prerogative* aforesaid, whereby the said *A. B.* cometh to be *endamaged* or *prejudiced* more, than otherwise he should have been; that the *Executors* ought to make him some considerable *satisfaction* for the same, although perhaps not to the *full* of what he hath *suffered*, or would *demand*; yet in such a

pro-

proportion, as to the judgement of *indifferent perſons* (in a caſe wherein *both parties*, if they muſt do what is *fitting* and *juſt*, are ſure to be *loſers*) ſhall ſeem *reaſonable*, in caſe the *parties* cannot *accord* it between themſelves.

4. Whereof although, through the *corrupt partiality*, that is in moſt, I may truly ſay; all men *more* or *leſs*, I do not apprehend any great likelihood (for neither part *would*, and yet both *muſt* be *loſers*) yet I ſhould adviſe that *tryal* were made thereof in the *firſt place*, as the moſt kindly *Chriſtian way* of growing to *peace*, if *parties* will be perſwaded to *meet* about it, and can be made *Maſters* of their own *paſſions* when they are *met*; and ſurely *matters* might eaſily be brought to a *handſom concluſion*, if both *parties*, but eſpecially the *Executors*, who ſeem to have the *advantage* in *Law*, would not ſtand too much upon whatſoever *advantage* they may *ſeem* to have, but (as in *conſcience* they ought) ſubmit both *that*, and all other *circumſtances* appertaining to the *buſineſs*,

and indeed their *whole mutual demands*; to the final determination of that *tranſcendent Law*, which *Chriſt* hath *eſtabliſhed*, as the only *Royal Standard*, whereby to meaſure the *equity* of our *actions*, in all our dealings towards others, *viz. To do as we would be done unto*; or which cometh to one, *Not to do that to another, which if he ſhould do to us* (ſuppoſing his Caſe was ours) *we ſhould think our ſelves ſcarce juſtly and fairly dealt withal.*

5. But *laſtly*, in caſe no ſuch *accord* can be made, either by *agreement* of *Parties* or *mediation* of *Friends*, and that through the only *default* and *ſtiffneſs* of the *Executors*; *A. B.* having by all *fair wayes* faithfully ſought and endeavoured the ſame, I ſee not but the ſaid *A. B.* may (but not to be *done*, but as his *laſt refuge*) ſeek to relieve himſelf according to the *advice* of his *Council*, by making his *Addreſſes* to ſuch *perſon* or *Perſonage*, as for the *time being*, ſhall be in *actual poſſeſſion* of the *Supreme Power*, and ſo in

a

a capacity to *over-rule* the *Law*, in a Caſe of that *nature*, by forgiving that *Debt*, whereupon the King was colourably and fraudulently *entituled* for *private advantage*, to the *prejudice* of a *third perſon*, but was not at all a *debt* owing to him from the *Obligee*.

B. P. 17. *July*, 1658.

THE END.

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